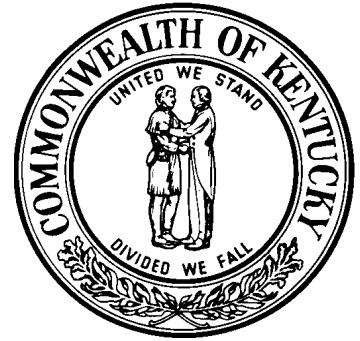


ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 37, NUMBER 3
WEDNESDAY, SEPTEMBER 1, 2010

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MEETING NOTICE: ARRS

The Administrative Regulation Review Subcommittee is **tentatively** scheduled to meet September 14, 2010 at 1:00 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages 559-662 of this Administrative Register.

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

HOW TO CITE: Cite all material in the **ADMINISTRATIVE REGISTER OF KENTUCKY** by Volume number and Page number. Example: Volume 36, Kentucky Register, page 318 (short form: 36 Ky.R. 318).

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

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

ADMINISTRATIVE REGISTER OF KENTUCKY

(ISSN 0096-1493)

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The Administrative Register of Kentucky is published monthly by the Legislative Research Commission, 700 Capitol Avenue, Room 300, Frankfort, Kentucky 40601. Subscription rate, postpaid in the United States: \$96 (plus 6% Kentucky sales tax) per year for 12 issues, beginning in July and ending with the June issue of the subsequent year. Periodical postage paid at Frankfort, Kentucky.

POSTMASTER: Send address changes to Administrative Register of Kentucky, 700 Capitol Avenue, Room 64, State Capitol, Frankfort, Kentucky 40601.

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**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA, SEPTEMBER 14, 2010, at 1:00 p.m., Room 149 Capitol Annex**

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Consumer Protection Division**

Division of Consumer Protection

40 KAR 2:350. Debt adjusters. (Amended After Comments)

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101 KAR 5:015 & E. Furloughs. ("E" expires 1/9/2011)

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102 KAR 1:320 & E. Qualified domestic relations orders. ("E" expires 1/11/2011)

102 KAR 1:330 & E. Travel and administrative expenses. ("E" expires 1/11/2011)

**Department of Revenue
Office of Income Taxation**

Income Tax; Withholding

103 KAR 18:070. Supplemental wages and other payments subject to withholding.

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Sales and Use Tax; Administrative and Accounting

103 KAR 31:102. Rebate for a governmental public facility.

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106 KAR 2:020. Military Family Trust Fund.

**GENERAL GOVERNMENT CABINET
Board of Pharmacy**

Board

201 KAR 2:330. Emergency pharmacy powers.

Board of Dentistry

Board

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

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

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

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

201 KAR 8:520 & E. Fees and fines. ("E" expires 1/11/2011)

201 KAR 8:530 & E. Licensure of dentists. ("E" expires 1/11/2011)

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

201 KAR 8:560 & E. Licensure of dental hygienists. ("E" expires 1/11/2011)

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

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Board of Veterinary Examiners**

Board

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

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Board

201 KAR 20:057. Scope and standards of practice of advanced practice registered nurses.

201 KAR 20:070. Licensure by examination.

201 KAR 20:110. Licensure by endorsement.

201 KAR 20:162. Procedures for disciplinary hearings pursuant to KRS 314.091.

201 KAR 20:225. Reinstatement of licensure.

201 KAR 20:230. Renewal of licenses.

201 KAR 20:240. Fees for applications and for services.

201 KAR 20:370. Applications for licensure.

201 KAR 20:411. Sexual assault nurse examiner program standards and credential requirements.

201 KAR 20:470. Dialysis technician credentialing requirements and training program standards.

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201 KAR 34:020. Fees.

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Board

201 KAR 39:050 & E. Renewal of licenses and extension of temporary licenses. ("E" expires 12/12/2010)

TOURISM, ARTS AND HERITAGE CABINET Office of the Secretary

Office

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Department of Fish and Wildlife Resources

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301 KAR 1:410. Taking of fish by nontraditional fishing methods. (Amended After Comments)

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Livestock Sanitation

302 KAR 20:020. General requirements for interstate and intrastate movement of animals.

302 KAR 20:050. Carcasses.

302 KAR 20:115 & E. Vesicular stomatitis. ("E" expires 12/29/2010)

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302 KAR 21:005 & E. Animal disease to be reported. ("E" expires 12/29/2010)

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Authority

307 KAR 1:060. Kentucky small business investment credit program.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Water

Public Water Supply

401 KAR 8:100. Design, construction, and approval of facilities. (Comments Received, SOC ext.)

Division for Air Quality

New Source Standards

401 KAR 59:015. New indirect heat exchangers. (Amended After Comments)

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Special Law Enforcement Officers

500 KAR 2:020. Filing and processing SLEO commissions.

Special Local Peace Officers

500 KAR 3:020. Filing and processing SLPO commissions.

Department of Kentucky State Police Forensic Laboratory

DNA

502 KAR 32:010. Centralized database for DNA identification records.

TRANSPORTATION CABINET Department of Vehicle Regulation Motor Vehicle Licensing

Motor Vehicle Tax

601 KAR 9:015. Registration of motor vehicles and manufacturing.

Kentucky Bicycle and Bikeway Commission

Motorcycle and Bicycle Safety

601 KAR 14:030. Bicycle and bikeway program.

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)

School Terms, Attendance and Operation

702 KAR 7:130 & E. Approval of innovative alternative school calendars. ("E" expires 12/20/2010)

Pupil Transportation

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

PUBLIC PROTECTION CABINET Department for Libraries and Archives Public Records Division

Archives

725 KAR 1:061. Records retention schedules; authorized schedules.

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Administration

781 KAR 1:040. Rehabilitation technology services.

Department of Insurance Agent Licensing Division

Agent, Consultants, Solicitors and Adjusters

806 KAR 9:001. Prelicensing courses of study; instructors.

806 KAR 9:030. Adjusters, apprentice adjusters; licenses, restrictions.

806 KAR 9:060. Identification cards.

806 KAR 9:070. Examinations.

806 KAR 9:121. Repeal of 806 KAR 9:120, 806 KAR 9:130, 806 KAR 9:250 and 806 KAR 9:280.

Health and Life Division

806 KAR 17:180. Standard health benefit plan.

Division of Kentucky Access

Health Insurance Contracts

806 KAR 17:540. ICARE Program high-cost conditions.

806 KAR 17:545. ICARE Program employer eligibility, application process, and requirements.

806 KAR 17:555. ICARE Program requirements.

Division of Property and Casualty

Liability Self-Insurance Groups

806 KAR 46:050. Liability self-insurance group rate, underwriting and evidence of coverage filings.

Kentucky Horse Racing Commission

Quarter Horse, Appaloosa and Arabian Racing

811 KAR 2:020 & E. Licensing quarter horse, appaloosa or Arabian racing. ("E" expires 12/12/2010) (Deferred from August)

811 KAR 2:140 & E. Licensing of racing associations. ("E" expires 12/12/2010) (Deferred from August)

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services Division of Healthcare Facilities Management

Medicaid Services

907 KAR 1:014 & E. Outpatient hospital services. ("E" expires 12/28/2010)

Division of Program Integrity

Division

907 KAR 5:005 & E. Health insurance premium payment (HIPP) program. ("E" expires 12/28/2010)

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Board

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

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

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

TOURISM, ARTS AND HERITAGE CABINET DEPARTMENT OF PARKS

Parks and Campgrounds

~~304 KAR 1:040. Campgrounds.~~ (Withdrawn by Agency 8/18/2010)

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

Attainment and Maintenance of the National Ambient Air Quality Standards

401 KAR 51:001. Definitions for 401 KAR Chapter 51.

Permits, Registrations, and Prohibitory Rules

401 KAR 52:001. Definitions for 401 KAR Chapter 52.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Kentucky Board of Education Department of Education

Office of Instruction

~~704 KAR 3:303. Required Core Academic Standards.~~ (Withdrawn, SOC not filed by deadline)

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

PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission

Thoroughbred Racing

810 KAR 1:009 & E. Jockeys and apprentices. ("E" expires 12/12/2010) (Comments Received, SOC ext.)

810 KAR 1:026 & E. Racing associations. ("E" expires 12/12/2010) (Comments Received, SOC ext.)

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Department of Housing, Buildings and Construction Division of Plumbing

Plumbing

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

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

Kentucky Early Intervention System

902 KAR 30:001 & E. Definitions. ("E" expires 1/11/2011) (Deferred from September)
902 KAR 30:110 & E. Point of entry and service coordination. ("E" expires 1/11/2011) (Comments Received, SOC ext.)
902 KAR 30:120 & E. Evaluation and eligibility. ("E" expires 1/11/2011) (Comments Received, SOC ext.)
902 KAR 30:130 & E. Assessment, service planning, and assistive technology. ("E" expires 1/11/2011) (Comments Received, SOC ext.)
902 KAR 30:141. Repeal of 902 KAR 30:140 and 30:170. (Deferred from December)
902 KAR 30:150 & E. Personnel qualification. ("E" expires 1/11/2011) (Comments Received, SOC ext.)
902 KAR 30:160 & E. Covered services. ("E" expires 1/11/2011) (Comments Received, SOC ext.)
902 KAR 30:180 & E. Procedural safeguards. ("E" expires 11/1/2011) (Comments Received, SOC ext.)
902 KAR 30:200 & E. Coverage and payment for services. ("E" expires 1/11/2011) (Comments Received, SOC ext.)

Department for Medicaid Services Division of Healthcare Facilities Management

Medicaid Services

907 KAR 1:012 & E. Inpatient hospital service coverage. ("E" expires 12/28/2010) (Comments Received, SOC ext.)
907 KAR 1:015 & E. Payments for outpatient services. ("E" expires 12/28/2010) (Comments Received, SOC ext.)
907 KAR 1:019 & E. Outpatient pharmacy program. ("E" expires 12/28/2010) (Comments Received, SOC ext.)
907 KAR 1:479 & E. Durable medical equipment covered benefits and reimbursement. ("E" expires 12/28/10) (Comments Received, SOC ext.)
907 KAR 1:677 & E. Medicaid recipient lock-in program. ("E" expires 12/28/2010) (Comments Received, SOC ext.)
907 KAR 1:825 & E. Diagnosis-related group (DRG) inpatient hospital reimbursement. ("E" expires 12/28/2010) (Comments Received, SOC ext.)

Division of Community Alternatives

Payment and Services

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

**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, AUGUST 13, 2010

STATEMENT OF EMERGENCY
101 KAR 5:015E

Pursuant to House Bill 1 passed during the Kentucky General Assembly 2010 Extraordinary Session, the Secretary of Personnel must promulgate an administrative regulation prior to the furlough of any state employee. The first mandatory furlough date for all state executive branch employees is set for September 3, 2010. Accordingly, pursuant to KRS 13A.190(1)(3), this administrative regulation must be filed as an emergency regulation to meet the deadline as stated in 2010 Extra. Sess. Ky. Acts ch. 1, Part IV, 11(g). The decision to implement furloughs was necessary to achieve the savings required by the budget passed by the General Assembly. In the first fiscal year alone, over \$24 million dollars in savings will be recognized. The emergency amendment will be replaced by an ordinary amended administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on August 13, 2010. This emergency administrative regulation is identical to the ordinary administrative regulation. This emergency administrative regulation differs from the previously filed emergency administrative regulation in that it provides detailed information on the furlough dates for the 2010-2011 fiscal year, the specific classifications which may be exempted from the furlough requirements, how furlough plans shall be submitted to the Personnel Cabinet, and also contains technical changes in compliance with KRS Chapter 13A.

PERSONNEL CABINET
(New Emergency Administrative Regulation)

101 KAR 5:015E. Furloughs.

RELATES TO: 2010 Extra. Sess. Ky. Acts ch. 1, Part IV, 11
STATUTORY AUTHORITY: 2010 Extra. Sess. Ky. Acts ch. 1, Part IV, 11(g)

EFFECTIVE: July 29, 2010

NECESSITY, FUNCTION, AND CONFORMITY: 2010 Extra. Sess. Ky. Acts ch. 1, Part IV, 11(g) requires the Secretary of Personnel to promulgate an administrative regulation establishing procedures for the implementation of furloughs or a temporary reduction of hours of all Executive Branch employees due to a lack of funds as certified by the State Budget Director. This administrative regulation establishes the provisions and requirements for these furloughs.

Section 1. Definitions. (1) "Appointing Authority" means:

(a) An individual who meets the definition of KRS 18A.005(1) or 151B.010(1); or

(b) For employees governed by KRS Chapter 16, the Commissioner of the Department of Kentucky State Police.

(2) "Furlough" or "reduction in hours" means the temporary reduction of hours an employee is scheduled to work by the appointing authority within a pay period.

(3) "Lack of funds" means a current or projected deficiency of funding to maintain current or projected levels of staffing and operations of state government in a fiscal year.

(4) "Secretary" means the Secretary of the Personnel Cabinet as provided for in KRS 18A.115.

Section 2. General Provisions. (1) Based upon the lack of funds certified by the State Budget Director, and the approval of the Governor, the requirements established in this administrative regulation shall govern the furlough of all state Executive Branch employees.

(2) A furlough plan shall be developed by each executive branch Cabinet or independent agency in conformity with these requirements, and upon approval by the Secretary, shall be implemented at the Cabinet or independent agency level by an appointing authority.

(3) Furlough plans shall include the following provisions:

(a) All state Executive Branch employees, classified and unclassified, shall be furloughed for a total of six (6) working days

over the course of the 2010-2011 fiscal year.

(b) An employee shall not be furloughed more than twenty-four (24) work hours in a six (6) month calendar period, as provided in this paragraph.

1. An employee regularly assigned to a forty (40) hour work schedule shall not be furloughed more than three (3) work days or twenty-four (24) work hours.

2. An employee regularly assigned to a 37.5-hour work schedule shall not be furloughed more than three (3) work days or twenty-two and one-half (22.5) work hours, which is the equivalent reduction of hours and corresponding pay.

3. Any other employee on a different work schedule shall be furloughed in a manner to achieve an equivalent reduction of hours and corresponding pay. These provisions shall be set forth in the furlough plan provided by the Cabinet Secretary or independent agency head and approved by the Secretary of Personnel.

(4) Unclassified employees appointed pursuant to KRS 18A.115(1)(d), (e), (f), (g), (h), or (i) may be furloughed additional work hours at the discretion of the appointing authority.

(5) A furloughed employee whose hours of work are temporarily reduced:

(a) Shall remain eligible for state-paid benefits during the temporary reduction of hours;

(b) Shall be notified in writing by the appointing authority at least seven (7) calendar days prior to the date of furlough, except that an employee may voluntarily agree in writing to waive the seven (7) day notice requirement;

(c) Shall not be furloughed more than twenty (20) percent of an employee's scheduled work hours in any one (1) work week, except as provided in subsection (6) of this section;

(d) Shall not be eligible to utilize accrued leave balances in lieu of temporary reduction of hours without pay; and

(e) Shall not be entitled to appeal the reduction of work hours to the Personnel Board, the Kentucky Technical Education Personnel Board, the Department of Kentucky State Police Personnel Board, or the applicable administrative body.

(6) In addition to the mandatory furlough hours, any employee may volunteer, with the prior approval of the appointing authority, to take leave without pay and retain accrued leave balances. An employee shall submit the Voluntary Furlough Request Form to the Secretary of Personnel before the effective date of a voluntary furlough.

(7) A contract worker shall not perform services pursuant to the contract when the assigned state office building is closed due to furlough. The work schedules of all contract workers shall be reduced in the same manner as state employees during other periods of furlough.

Section 3. Furlough Dates. (1) The six (6) furlough days shall be scheduled as follows:

(a) In order to maximize operational costs, state government shall "shut down" and close on three (3) of the furlough days:

1. September 3, 2010;
2. November 12, 2010; and
3. May 27, 2011.

(b)1. The remaining three (3) furlough days shall be applied in the following months:

- a. October 2010;
- b. March 2011; and
- c. April 2011.

2. Each Cabinet Secretary, independent agency head, or designated appointing authority shall furlough each employee not exempted in subsection (2) of this section the equivalent of one (1) day during each of the months listed in subparagraph 1. of this paragraph.

(2) The individuals employed in the following specific job classifications may be exempted from any or all provisions of the furlough requirements, as approved by the Secretary of the Personnel Cabinet, upon request and certification by the Secretary of the Justice and Public Safety Cabinet, the Secretary of the Cabinet for Health and Family Services, or the Commissioner of State Police:

(a) Job classifications directly responsible for the care or safety

of inmates or residents in twenty-four (24) hour correctional or juvenile justice facilities;

(b) Job classifications directly responsible for the care or safety of residents in twenty-four (24) hour mental health facilities; and

(c) Job classifications of uniformed law enforcement officers or trainees that are required to protect the lives and safety of the citizens of the Commonwealth.

(3) In conjunction with the appointing authority, the Secretary shall provide maximum flexibility to the facilities with twenty-four (24) hour, seven (7) day-a-week operations to ensure that the employees within these facilities are appropriately furloughed while any disruption of services is minimized.

(4) Each Cabinet Secretary and independent agency head, in conjunction with the Secretary, shall consider the impact of these furlough requirements on the specific public services the individual Cabinet or independent agency provides and the impact of the scheduled furloughs on the workforce within the individual Cabinet or independent agency. This information shall be provided to the Secretary within the furlough plan.

(5) Each Cabinet or independent agency, once approved by the Secretary, may designate additional appointing authorities to effectuate the furlough of its employees.

(6) If there is an emergency or natural disaster, as certified by the Governor, the Secretary may alter, amend, revoke, suspend, or otherwise set aside any of the furlough requirements as necessary.

Section 4. Incorporation by Reference. (1) The Voluntary Furlough Request Form, July 2010, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

NIKKI R. JACKSON, Secretary

APPROVED BY AGENCY: August 13, 2010

FILED WITH LRC: August 13, 2010 at 11:30 a.m.

CONTACT PERSON: Dinah T. Bevington, Office of Legal Services, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dinah T. Bevington

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the requirements for implementing furlough plans for all state Executive Branch employees.

(b) The necessity of this administrative regulation: 2010 Extra. Sess. Ky. Acts ch. 1, Part IV, 11(g) established that the Secretary of Personnel must promulgate an administrative regulation prior to the furlough of any employee. The regulation is necessary to implement the authorized furloughs, establish the criteria which must be included, and also notify employees of the consistent guidelines which will apply to all employees when the furloughs are implemented.

(c) How this administrative regulation conforms to the content of the authorizing statutes: 2010 Extra. Sess. Ky. Acts ch. 1, Part IV, 11(g) requires the Personnel Secretary to promulgate this regulation prior to exercising the authority with which the Personnel Cabinet, the Governor, and the Office of the State Budget Director were expressly granted. Further, KRS 18A.030 allows the secretary to promulgate comprehensive administrative regulations consistent with the provisions of KRS Chapters 13A and 18A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in the effective administration of the requirements of those set forth in 2010 Extra. Sess. Ky. Acts ch. 1, Part IV, 11(g), as it establishes when the furlough will be implemented and the additional guarantees that all employees will receive.

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

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

(b) The necessity of the amendment to this administrative

regulation: N/A

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation impacts all state Executive Branch Cabinets and independent agencies.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each entity will have to review how these furlough requirements will impact their workforce and the services the cabinet or agency provides to the Commonwealth of Kentucky. This will involve the determination of whether any staff should be exempted from any specific furlough requirement, per the limitations set forth in the regulation. Each entity will then be responsible for implementation of the furloughs, as well as the oversight and tracking of the unpaid leave of its employees. Proper notice to each employee is required, which is handled at the cabinet/agency level, as well as the handling of additional questions or issues which may arise.

(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 additional costs anticipated to each of the entities identified.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The decision to implement furloughs was necessary to achieve the savings required by the budget passed by the General Assembly. In the first fiscal year alone, over \$24 million dollars in savings will be recognized.

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

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This regulation, as amended, is not anticipated to generate any new or additional fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? Tiering does not apply because all classes are treated the same under this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. HB 1 of the 2010 Kentucky General Assembly Extraordinary Session and KRS 18A.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.

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

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

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

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

STATEMENT OF EMERGENCY 601 KAR 1:018E

The current language of this administrative regulation forbids the movement of self propelled farm implements on Kentucky interstate highways, toll roads, or fully controlled access highways. However, the reclassification of many streets in Kentucky cities is resulting in a change in the flow of traffic from one (1) way streets to two way streets. This emergency administrative regulation is being promulgated to address the imminent risk to public safety by the presence of overdimensional self propelled farm implements traveling in two way traffic on city streets. The emergency language will allow a self propelled farm implement to obtain a permit to travel on a fully-controlled access highway within specific safety parameters thus avoiding travel against oncoming traffic on two (2) way city streets. This emergency regulation is also being promulgated to alleviate a situation that is causing an economic hardship and a potential loss of jobs and revenue to the citizens of Fayette County and the Commonwealth. This emergency administrative regulation adds language that will permit overweight and overdimensional loads originating in Fayette County to travel on Interstates 64 and 75 in Fayette County during rush hour traffic. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed simultaneously with the emergency administrative regulation. The ordinary administrative regulation is identical to the emergency administrative regulation.

STEVE BESHEAR, Governor
MIKE HANCOCK, Secretary

TRANSPORTATION CABINET Department of Vehicle Regulation Division of Motor Carriers (Emergency Amendment)

601 KAR 1:018E. Special overweight or overdimensional permits.

RELATES TO: KRS 175.450, 177.390-177.570, 177.9771, 186.010(8), 186.050(8)(9), 189.221, 189.222, 189.225(3), 189.270, 189.2715, 189.2717, 281.752, 23 C.F.R. 658.17, 49 C.F.R. 367, 393.11

STATUTORY AUTHORITY: KRS 189.270(6), 189.271(9)(b), 189.2715(1), 189.2717(1)

EFFECTIVE: August 12, 2010

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189.270(6)(1) to (5), 189.271(9)(b), 189.2715(1), and 189.2717(1) authorize the Secretary of the Kentucky Transportation Cabinet to issue permits for the movement of motor vehicles with divisible or nondivisible loads exceeding legal weights or dimensions. This administrative regulation establishes the procedures and requirements for the issuance of an overweight or overdimensional permit. It exempts certain farm implement movements from the requirements of obtaining an overdimensional permit, but retains the associated safety requirements.

Section 1. Definitions. (1) "Boat" means a vehicle used for movement on the water and the trailer on which it is placed for transporting the vehicle on the highway.

(2) "Divisible load" means a load ~~that if [which when]~~ reasonably divided, dismantled, disassembled or rearranged would no longer be overweight or overdimensional.

(3) "Dual-wheel axle" means one (1) axle with two (2) wheels on each side of the axle.

(4) "Farm implement or equipment" means machinery, equipment or vehicle used exclusively in a farm or agriculture operation including those ~~farm implements in KRS 186.010(8)(a) that [none which]~~ are not required by ~~[KRS Chapter 186]~~ to be registered.

(5) "Fully-controlled access highway" means a highway ~~that [which]~~:

(a) Gives preference to through traffic;

(b) Has access only at selected public roads or streets; and

(c) Has no highway grade crossing or intersection.

(6) "Height pole" means a vertical clearance measuring device. ~~["National holiday" means:~~

~~(a) New Year's Day;~~

~~(b) Memorial Day (as observed on the last Monday in May);~~

~~(c) Independence Day;~~

~~(d) Labor Day;~~

~~(e) Thanksgiving Day; and~~

~~(f) Christmas Day.]~~

(7) "Nondivisible load" ~~or vehicle~~ means a load or vehicle ~~exceeding applicable length, height, or weight limits that [which]~~ if separated into smaller loads ~~or vehicles~~ would:

(a) Compromise the intended use of the vehicle, making it unable to perform the function for which it was intended;

(b) Destroy the value of the load or vehicle, making it unusable for its intended purpose; or

(c) Require more than eight (8) work hours to dismantle using appropriate equipment.

(8) "Overdimensional" means the motor vehicle exceeds the dimension limits set forth in 603 KAR 5:070.

(9) "Overweight" means the motor vehicle exceeds:

(a) The gross weight limit established in 603 KAR 5:066;

(b) The axle weight limit established in 603 KAR 5:066;

(c) The gross weight limits established by KRS 177.9771 for a motor vehicle transporting coal or coal by-products;

(d) The bridge weight limit established by 603 KAR 5:066; or

(e) The gross weight limit posted at a bridge or other structure.

(10) ~~["Permit fee" means the fee set forth in KRS 189.270, 189.2715, or 189.2717 for the issuance of an overweight or overdimensional trip or annual permit, to cover the cost of processing the permit application, including:~~

~~(a) A qualification check of the applicant;~~

~~(b) A statutory compliance check; and~~

~~(c) An initial bridge and weight analysis.~~

(11) "Pole trailer" means a motor vehicle without motive power that is [a vehicle which is]:

(a) Designed to be drawn by a motor vehicle and attached to the towing motor vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing motor vehicle; and

(b) Used for transporting long or irregularly shaped loads such as poles, pipes, or structural members ~~that [which]~~ generally are capable of sustaining themselves as beams between the supporting connections.

(12) "Sealed containerized ocean-going cargo unit" means a nondivisible unit of cargo that is part of international trade due to importation from, or exportation to another country.

(13) "Single-wheel axle" means one load bearing axle [a steering axle] with one (1) wheel on each side of the axle.

(14) "Steering Axle" means the axle or axles of a vehicle or combination of vehicles by which the vehicle or vehicles are guided or steered.

(15) "Toll road" means any project constructed under the provisions of KRS Chapter ~~175.450[176]~~ or KRS 177.390 through 177.570 on which a toll is collected or was in the past collected by the Transportation Cabinet.

(16) "Trunnion axle" means an axle configuration with two (2) individual axles mounted in the same transverse plane with four (4) tires on each axle connected at a pivot point that allows each individual axle to oscillate in a vertical plane to provide constant and equal weight distribution on each individual axle.

(17) ~~[(44)]~~ "Utility equipment" means the specialized equipment,

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including earth-moving equipment, necessary for the installation or operation of utility poles or pipes, ~~or~~ transformers, regulators, or other utility electrical field equipment. It shall not include any equipment necessary for the construction or operation of a power generation station.

Section 2. Permit Application. (1) An applicant for an overweight or overdimensional annual or single trip permit shall submit to the Division of Motor Carriers a completed ~~Application for Annual Overweight or Overdimensional Permit, TC Form 95-25 or a completed Kentucky Overweight or Overdimensional Permit Worksheet, TC Form 95-10 for a single trip permit. A~~ permit application shall contain the following:

(a) A detailed description of the equipment or load to be moved;

(b) A description and vehicle identification number of the power unit moving the equipment;

(c) Registration weight and license plate number of the power unit;

(d) ~~The carrier's~~Equipment operator's name, telephone number and address;

(e) Routes requested for travel; and

(f) The period of time requested for travel:

1. A single trip shall be ten (10) days or less; or

2. An annual permit shall be 365 days from date of issue.

(2) A single trip permit application or request shall specify the following:

(a) The year and make of the towing vehicle;

(b) The towing vehicle's license plate number;

(c) The maximum weight for which the vehicle is registered;

(d) The state of registration of the vehicle;

(e) The name and address of the owner;

(f) The dates of travel;

(g) The serial number for a~~(of the)~~ manufactured home;~~and~~

(h) The specific routes of travel requested; and

(i) A description of the cargo.

(3) If the towing vehicle for which a single trip permit is being requested is registered in a state other than Kentucky, the vehicle shall be either:

(a) Apportioned registered to operate in Kentucky; or

(b) In compliance with KRS 281.752.

(4) An annual permit application or request shall specify the following information relating to the motor vehicle:

(a) Year and make;

(b) Vehicle identification number;

(c) License plate number and unit number;

(d) The maximum weight for which it is registered;

(e) The state of apportioned registration, if not registered in Kentucky;

(f) Name and address of the motor carrier operating or the owner of the towing vehicle;~~and~~

(g) Whether the motor carrier operating the towing vehicle is a for-hire or private carrier;

(h) A general description of cargo; and

(i) Axle spacing.

(6) If the towing vehicle issued an annual permit is registered in a state other than Kentucky, the vehicle shall be apportioned registered to operate in Kentucky and be subject to the fees established in 49 C.F.R. Part 367.

(7) The application for an annual permit shall contain a certification by the applicant that he or she shall comply with Kentucky laws and regulations related to~~is aware of the safety requirements in~~ the movement of overweight or~~or~~ overdimensional loads~~and shall at all times comply with them~~.

(8) Special annual or trip permits to allow the movement of motor vehicles with gross weights or gross dimensions in excess of the weights and dimensions specified by statute and administrative regulation shall be issued by the~~Department of Vehicle Regulation~~ Division of Motor Carriers if the~~when, in the discretion of the department, this~~ movement is necessary to provide transportation for specified cargo in the interest of the health, welfare and economy of the people.

(9) Each trip or annual permit issued shall be limited to designated portions of the state primary road system and stated periods

of time.

(10) A separate permit shall be required for each vehicle involved in a movement.

(11) A permit shall not be issued for a divisible load ~~that if which when~~ reasonably divided, dismantled, disassembled or rearranged would no longer be overweight or overdimensional except as provided by KRS 189.2715 or 189.2717.

(12) An overweight permit shall not be issued to the following:

(a) A Kentucky licensed vehicle with~~for~~ a gross weight exceeding that for which the truck is registered~~;~~ unless registered for 80,000 pounds (36,287.36 kilograms);

(b) A tractor-trailer combination of less than five (5) axles;

(c) A vehicle not registered in Kentucky, unless it has met one (1) of the following conditions:

1. The vehicle has been apportioned registered by another jurisdiction to operate in Kentucky at 80,000 pounds (36,287.36 kilograms); or

2. The vehicle has met the provisions of KRS 281.752;

(d) A vehicle whose axle weight would exceed the product of 700 pounds (317.51 kilograms) times the aggregate width in inches established from the manufacturer's stamped tire measurement for all tires on the axle; or

(e) A towing vehicle whose horsepower or braking capacity is not adequate to safely transport the overdimensional or overweight load.

(13) ~~The cabinet shall further restrict the movement or deny the permit for a~~This administrative regulation shall not prohibit the permit issuing office from further restricting movements or denying a permit for any movement ~~that which~~ may cause damage to property or ~~that which~~ may be detrimental to public safety and convenience.

(14) An annual permit shall not be issued if the vehicle is licensed with a limited or restricted registration as identified in KRS 186.050(8) and (9) for Kentucky-based vehicles.

Section 3. Height. (1) A vehicle and load with a height in excess of thirteen (13) feet, six (6) inches shall obtain a single-trip overdimensional permit~~;~~ pursuant to KRS 189.270(2)~~;~~ prior to movement.

(2) The maximum height for each single-trip overdimensional permit shall be determined by the cabinet~~;~~ based upon underpass and bridge height along the designated route.

Section 4. Weight. (1) Gross or axle overweight shall not be permitted:

(a) On a combination units of less than five (5) axles; or

(b) On a single unit except off-road equipment such as road graders~~scrapers~~, mobile cranes, or other self-propelled units.

(c) A self propelled off-road vehicle shall follow the axle weight limitation listed in subsection (3) of this section.

(2) A vehicle shall not issued an overweight permit that does not have a declared gross weight of at least 80,000 lbs~~Kentucky licensed vehicles shall not be permitted for weights exceeding that for which licensed unless licensed for the maximum of 80,000 pounds~~.

(3) The weight on any single axle in any combination shall not exceed the product of 700 pounds times the aggregate width in inches established by the manufacturer's stamped tire measurement of all the tires on the axle, or the following axle or axle group weights, whichever is less:

(a) Single wheel axle - 24,000 pounds;

(b) Steering axle - 20,000 pounds;

(c) Tandem duel wheel axle group if the combination vehicle has only five (5) axles total - 45,000 pounds (minimum of forty-two (42) inches spacing between the center of each of the axles of the tandem axle group);

(d)~~(e)~~ Tandem duel wheel axle group if the combination vehicle has six (6) or more axles total - 48,000 pounds (minimum of forty-two (42) inches spacing between the center of each of the axles of the tandem axle group);

(e)~~(f)~~ Tridem axle group - 60,000 pounds (minimum of forty-two (42) inches spacing between the center of each of the axles of the tridem axle group);

(f) A Trunun axle group;

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(g)(e) Five (5) axle combination units not exceeding~~shall not exceed~~ 96,000 pounds gross weight;

(h)(f) Six (6) axle combination units shall not exceeding~~shall not exceed~~ 120,000 pounds gross weight;

(i)(g) Seven (7) axle combination units shall not exceed~~shall not exceed~~ 160,000 pounds gross weight.

(4) ~~[Since bridge capacity is the weight controlling factor in most instances, these]~~ Maximum weights shall not be permitted unless all bridges and roads on the moving route~~involved~~ have sufficient capacity to accommodate the load.

Section 5. Responsibility of Permit Holder. (1) Any damage to the highway, signs, guardrail or other public or private property caused by the transportation of the specialized equipment shall be the responsibility of the permit holder. The permit holder shall either repair all damage incurred or pay for the repair.

(2) A permit holder shall not cut, trim, remove or relocate any tree, shrub, guardrail, highway sign or other object on the highway right-of-way without the written approval of the chief district engineer or their designee~~having jurisdiction over the property involved~~.

(3) The applicant shall be responsible for providing accurate information and reviewing the permit prior to travel on Kentucky highways.

Section 6. Permit Availability. (1) ~~The original of the~~ annual permit issued by the Division of Motor Carriers shall be carried in the overweight or overdimensional vehicle at all times.

(2) A valid~~The original or facsimile copy of a~~ single trip permit shall be carried in the overweight or overdimensional vehicle or equipment at all times.

(3) A valid~~The~~ annual or the single trip permit shall be presented~~;~~ upon request~~;~~ to any law enforcement officer or authorized personnel of the Department of Vehicle Regulation.

(4) An annual permit not authenticated by the Division of Motor Carriers shall not be valid~~An unauthenticated photocopy of the annual permit shall not be valid~~.

Section 7. Duplicate Permits. (1) A duplicate permit that~~which~~ is needed to replace a lost, stolen or destroyed annual permit or to transfer the permit to another towing vehicle shall~~may~~ be obtained from the Division of Motor Carriers by a payment of ten (10) dollars. (2) Only One (1) transfer to another towing vehicle shall be allowed for each annual permit during its effective year.

(3) An~~Any~~ additional transfer of the annual permit requested shall be subject to the fees established~~set forth~~ in KRS 189.270. (4) The original permit shall be returned to the Division of Motor Carriers prior to the transfer of an annual permit.

Section 8. Travel Restrictions. (1) a A single trip permit shall be valid for a period not to exceed ten (10) days. A time extension shall only be granted if the permit holder proves extenuating circumstances.

(b) An annual permit shall be valid for 365 days from date of issuance.

(2) a In the interest of public safety, the department may further prohibit movements in congested areas within the peak traffic hours.

(b) The additional restrictions shall be noted on the permit when issued.

(3) Overdimensional restrictions shall not prohibit a utility company from working in an emergency situation to restore utility service to an area otherwise experiencing an outage.

Section 9. Farm Implements. (1) Unless the movement occurs on an interstate highway, toll road, or fully-controlled access highway, a permit shall not be required for transport of overdimensional farm implements from~~for the following trips~~:

- (a) ~~From~~ One (1) farm to another;
- (b) ~~From~~ A farm to a repair shop or dealer; or
- (c) ~~From~~ A repair shop or dealer to a farm.

(2) A permit holder or other operator moving overdimensional farm implements shall comply with the safety requirements set forth in this administrative regulation.

(3) The following movements of farm implements shall~~only~~ be made under the authority of an overdimensional permit:

- (a) Manufacturer to dealer;
- (b) Dealer to manufacturer;
- (c) Dealer to dealer; or
- (d) Moves on an interstate highway, toll road, or fully-controlled access highway.

(4) On an interstate highway or~~;~~ toll road~~;~~ or fully-controlled access highway~~;~~ a self-propelled farm implement shall not be:

- (a) Operated; or
- (b) Issued a permit for movement.

(5) A self propelled farm implement shall be issued a single trip or annual permit to operate fully-controlled access highway where its movement:

(a) Shall not create an unreasonable impedance of the flow of traffic; and

(b) Is accompanied by escorts as established in Section 11 of this administrative regulation.

(6) If the farm equipment to be transported exceeds twelve (12) feet in width~~;~~ the farm equipment dealer who holds the annual permit shall, prior to the proposed move, survey the entire route proposed ~~[to be used for the movement of the overdimensional farm equipment]~~ to confirm the roads are adequate to safely accommodate the load.

(7) ~~(6)~~ If there is any doubt of the adequacy of the highway to safely accommodate the overdimensional farm equipment~~;~~ the farm equipment dealer shall:

- (a) Select a different route; or
- (b) Contact the Division of Motor Carriers~~appropriate highway district office~~ for clearance to move the equipment over that specific route.

(8) ~~(7)~~ If the Division of Motor Carriers~~highway district office~~ does not issue clearance for the use of a particular route whose adequacy is in doubt, that route shall not be used.

Section 10. Bulldozers and Front End Loaders. (1) A blade or bucket attached to a bulldozer or front end loader that exceeds fourteen (14) feet in width shall be removed for highway movement.

(2) A blade or bucket that has been removed may be moved on a transporting vehicle without being considered a divisible load.

(3) A blade or bucket that protrudes beyond the transporting vehicle shall be loaded with the sharp edge or cutting edge of the blade or bucket facing the rear of the transporting vehicle.

Section 11. Pilot Car Escort Vehicle~~;~~ Safety and Flag Requirements. (1) Pilot car~~Required~~ escort vehicles shall accompany the overdimensional vehicle at a distance of 300 feet (91.44 meters) on open highways and shall:

- (a) Maintain radio contact with the loaded vehicle~~load~~;
- (b) Post identification signs or placards showing the name of the pilot car escort business and the state of business operation on both the right and left sides of the vehicle. The signs or placards shall contain lettering that:

1. Sharply contrasts with the sign or placard background color; and
2. Ensures visibility for a minimum of fifty (50) feet~~appropriate signs on the vehicle~~;

(c) Have two (2) or more top mounted high intensity flashing or rotating amber lights visible for a full 360 degrees for a minimum of 500 feet in daylight conditions

(d) Carry replacement bulbs for the amber flashing or rotating lights in the pilot car escort vehicle at all times during a move;

(e) Securely attach a top mounted "oversize load" sign to the pilot car escort vehicle that is visible for a distance of 100 feet from both the front and rear. The sign shall be:

- 1. Twelve (12) inches by sixty (60) inches;
- 2. Have black letters that are no less than ten (10) inches high written with a one (1) inch brush stroke;
- 3. Clearly note the words "oversize load" on a yellow background;
- 4. Reflective if used at night;
- 5. Always maintained in good condition.
- (f) ~~amber strobe lights or flashing light on the escort vehicle;~~

and

~~(4)~~ Keep its headlamps lit at all times and ensure that the pilot car escort vehicle lighting is in working order; and

(g) Have no less than one (1) rear view mirror on each side of the pilot car escort vehicle.

(2) A pilot car escort vehicle shall not tow cargo or equipment.

~~(3)~~(2) In cities or congested areas, the escort vehicle shall travel at a distance closer than 300 feet as necessary to protect other traffic.

~~(4)~~(3) On a two (2) lane highway, a vehicle and load with a width in excess of ten (10) feet, six (6) inches (three and two-tenths (3.2) meters) but twelve (12) feet (3.66 meters) or less shall have one (1) lead pilot car escort vehicle.

~~(5)~~(4) On a two (2) lane highway, a vehicle and load with a width exceeding twelve (12) feet (3.66 meters) shall have one (1) lead pilot car escort vehicle and one (1) trail pilot car escort vehicle.

~~(6)~~(5) On a two (2) lane highway, a vehicle and load traveling at speeds below the average driving speed of traffic on its route shall have one (1) trail pilot car escort vehicle.

~~(7)~~(6) On a highway that is four (4) lane or wider~~highway~~, a vehicle and load shall have one (1) trail pilot car escort vehicle if:

(a) Its width exceeds twelve (12) feet (3.66 meters);~~or~~

(b) It does not maintain a speed of forty-five (45) miles per hour (72.42 kilometers per hour); or

(c) The vehicle and load have a length of 120 feet.

~~(8)~~ On a four (4) lane or wider highway, a vehicle and load with a length of over 120 feet shall have a front and rear pilot car escort vehicle.

~~(9)~~(7) On a two (2) lane highway:

(a) A vehicle and load with a length in excess of seventy-five (75) feet (22.86 meters) but not more than eighty-five (85) feet (25.91 meters) shall have one (1) lead pilot car escort vehicle; and

(b) A vehicle and load with a length in excess of eighty-five (85) feet (25.91 meters) shall have one (1) lead and one (1) trail pilot car escort vehicle.

(10) As a special provision of the permit, and due to safety considerations, the cabinet may require additional pilot car escort vehicles, lighting, warning flags, or a height pole car.

(11)(a) A marked police escort vehicle shall be required for a movement that may result in a high probability of delay, hazard to the traveling public, or damage to the highway.

(b) A police escort shall not be required to display oversize signs.

Section 12. Towing Vehicle Sign and Safety Requirements.~~(1)~~(8) On a four (4) lane or wider highway:

~~(a) A vehicle and load with a length of 120 feet shall have one (1) trail escort; and~~

~~(b) A vehicle and load with a length of over 120 feet shall have a front and rear escort.~~

~~(9)~~ Red or orange fluorescent flags ~~that~~which are a minimum of eighteen (18) inches square (11,612.7 millimeters square) shall be displayed on each vehicle and load operating under the auspices of either an overlength or an overwidth permit.

(2) Vehicles operating overwidth shall display four (4) warning flags; one (1) at each of the four (4) corners.

~~(3)~~and If any portion of the load extends beyond the four (4) corners, additional flags shall be displayed at the widest points of the load.

~~(4)~~(b) Vehicles operating overlength or with a rearend overhang shall display two (2) warning flags located to indicate maximum width at the extreme rear of the vehicle or load.

~~(5)~~These flags shall be located to indicate maximum width of the rearend.

~~(40)~~ All vehicles exceeding ten (10) feet, six (6) inches, three and two-tenths (3.2) meters in width or having front overhang shall display two (2) warning signs. The warning signs shall:

(a) State in black letters on a yellow background, "OVERSIZE LOAD";

(b) Not be less than seven (7) feet (2.13 meters) long and eighteen (18) inches (0.46 meters) high;

(c) Have a brush stroke of one and four-tenths (1.4) inches (35.56 millimeters); and

(d) Be fastened at the front of the power unit, ~~and~~ the rearend of the towed unit, or at the rear of the load.

~~(6)~~(a)~~(44)~~ If the utility equipment, pole, or pipe being transported exceeds fifty-five (55) feet (16.76 meters) in length, a front pilot car escort vehicle shall accompany the vehicle required to be permitted.

(b) If the front overhang exceeds ten (10) feet (3.05 meters), an amber strobe or flashing light shall be placed on the power unit of the towing vehicle and shall be in use any time the power unit is in operation.

~~(7)~~(42)(a) The lighting devices and reflectors set forth in 49 C.F.R. 393.11 for pole trailers and projecting loads shall be required.

(b) ~~A~~Each lamp or light shall be used at all times that a~~the~~ vehicle is on or beside a highway.

(c) A front overhang shall not be allowed on a combination vehicle.

~~Section 13.~~(13) As a special provision of the permit, the Department of Vehicle Regulation may require additional escort vehicles, lighting or warning flags.

~~(14) The provisions of this section shall not apply if the vehicle or equipment is less than twelve (12) feet wide and the vehicle or equipment is:~~

~~(a) Used in part for off-road use;~~

~~(b) Not required to be registered or licensed; and~~

~~(c) Not transporting cargo.~~

~~Section 14.] House or Building Permits. (1)[Permits for movement of houses or other buildings shall be issued by the Department of Vehicle Regulation, Division of Motor Carriers.] An application for a permit to move a house or building shall be made on House Moving Application, TC Form 95-310, [TC 95-310, House Moving Application,] and submitted to the Division of Motor Carriers via mail, ~~or~~ hand delivery, or the motor carrier online permitting system at the Division of Motor Carriers, Transportation Cabinet Building, 200 Mero Street~~[3rd Floor, State Office Building, 504 High Street,] Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4~~ [4:30] p.m., or via fax at (502) 564-0992.~~

~~(2)(a) House moving permits shall~~(a) be issued for movements that occur~~[unless the movement is done] during off-peak traffic hours [when other traffic will be least affected].~~

(b) The mover shall be required to furnish all escorts and flagmen required in the interest of public safety.

(3) A permit shall not be issued for the movement of a~~any~~ permanent building other than a portable storage unit on a parkway or an interstate highway~~[units on either parkways, or interstate highways].~~

~~(4)(a) The Division of Motor Carriers shall contact the appropriate Department of Highways' district office for specific routing restrictions or local highway conditions prior to the issuance of a~~(a) the permit.

(b) Specific restrictions shall be identified on the permit and~~(c) Deviation from the restrictions shall void the permit~~

Section 14. Permits for Sealed, Containerized, Ocean-Going Cargo Units. (1) A vehicle moving a sealed, containerized, ocean-going cargo unit shall be eligible for a single trip permit.

(2) A vehicle eligible for a permit shall meet the size specifications and limitations established in KRS 189.222 and Section 4 of this administrative regulation.

(3) An applicant for a permit shall submit to the Division of Motor Carriers:

(a) A completed Kentucky Overweight or Overdimensional Permit Worksheet, TC Form 95-10;

(b) A payment of sixty (60) dollars pursuant to KRS 189.270(2); and

(c) A copy of an international bill of lading signed by a customs official, or an international bill of lading with an equipment interchange and inspection report.

(4) A permit shall be valid for:

(a) One move;

(b) A duration of ten (10) days; and

(c) Twenty-four (24) hour continuous movement during the

duration of the permit.

(5) An operator shall at all times during the move have in his or her possession a copy of the documents described in subsection (3)(c) of this section.

Section 15.~~[Section 12.]~~ Route Deviation. All vehicles transporting a load under an annual or trip permit shall obtain prior approval from the Division of Motor Carriers for any deviation from the routes approved by the Transportation Cabinet for the towing vehicle.

Section 16.~~[Section 13.]~~ Permit Required. Until an authorized~~[a special-written]~~ permit has been issued by the ~~[Department of Vehicle Regulation,]~~ Division of Motor Carriers under the provisions of this administrative regulation and KRS 189.270:

(1) An overweight ~~or~~^[/] overdimensional load of a width greater than eight and one-half (8 1/2) feet shall not be towed on any state-maintained highway;

(2) An overweight ~~or~~^[/] overdimensional load with a width greater than eight (8) feet shall not be towed on any state-maintained highway not included on the Transportation Cabinet's list of roads approved for passage of motor vehicles with increased dimensions pursuant to 603 KAR 5:070, except as provided in KRS 189.2225(3); and

(3) A manufactured home with a combined length of manufactured home and towing vehicle greater than 120 feet shall not be towed upon any Kentucky highway. The manufactured home shall not exceed eighty-five (85) feet in length ~~or sixteen (16) feet in width.~~

Section 17.~~[Section 14.]~~ Annual Permits. (1)(a) A permit shall not be issued for the movement of an overweight ~~or~~^[/] overdimensional load in excess of sixteen (16) feet in width inclusive of the usual and ordinary overhang.

(b) Mirrors on ~~a~~^{the} towing vehicle shall not be considered in determining ~~the~~^{making the determination of} width of an overweight or overdimensional load.

(2) Prior to a movement of an overweight ~~or~~^[/] overdimensional load under the provisions of an annual permit, the permit holder shall ~~survey the route and~~ evaluate the entire route proposed to be used for the movement of the overweight ~~or~~^[/] overdimensional load. The evaluation shall include the following:

- (a) Highway width;
- (b) Shoulder width and surface type;
- (c) Bridge width and posted weights;
- (d) Curves;
- (e) Turns to be negotiated;
- (f) Construction zones;
- (g) Obstructions;
- (h) Access control;
- (i) Traffic volume; and
- (j) Other routes available that might be safer even if not as convenient.

(3) The permit holder shall use the results of the evaluation to determine the safest route available to transport the overweight ~~or~~^[/] overdimensional load.~~[The permit holder shall determine if there would be any place on the proposed route which would be too narrow, have curves or turns too sharp or have other obstacles which would prevent the route from safely accommodating the move. The route selected by the permit holder shall be the safest available.]~~

(4) If there is any doubt about the adequacy of the highway to safely accommodate the overweight ~~or~~^[/] overdimensional load, the permit holder shall either:

- (a) Select a different route; or
- (b) Contact the Division of Motor Carriers~~[appropriate highway district office]~~ for approval~~[clearance]~~ to move ~~the~~^{that} overweight ~~or~~^[/] overdimensional load over that specific route.

(5) ~~[If the highway district office does not issue clearance for the use of a route whose adequacy is in doubt, that route shall not be used.]~~

(6) An annual permit shall not be issued or used for the movement if the height of the combination load and towing vehicle exceeds thirteen (13) feet, six (6) inches.

~~(6)(7)~~ Acceptance and use of the annual permit shall indicate the permit holder's acceptance of the liability associated with the move.

~~(7)(8)~~ Moves of overweight ~~or~~^[/] overdimensional loads more than twelve (12) feet wide shall be limited to highways of four (4) or more lanes and to the shortest and best two (2) lane route designated by the ~~[Department of Vehicle Regulation,]~~ Division of Motor Carriers~~[to be used to the unit's ultimate destination]~~. The ~~cabinet~~^[department] shall deny movements on ~~a route~~^[any routes] deemed unsuitable for move.

(9) The issuance cost of an annual and trip permit shall be that established by KRS 189.270.

Section 18.~~[Section 15.]~~ Traffic Control. (1) If an overweight ~~or~~^[/] overdimensional load while crossing a bridge would encroach on any other lane of traffic:

- (a) All approaching traffic shall be stopped; and
- (b) All trailing traffic shall be prevented from attempting to pass the overweight ~~or~~^[/] overdimensional load until the load has cleared the bridge and has moved sufficiently to the right to safely allow following traffic to pass.

(2) An overweight ~~or~~^[/] overdimensional load shall slow the movement of other traffic as little as possible. If traffic backs up~~either~~ behind~~or in front of~~ the load being moved, the escort vehicles and load shall exit the highway if there is sufficient space to do so.

Section 19.~~[Section 16.]~~ Permit Validity. (1) Any vehicle hauling building materials to a home or home site shall be allowed to travel fifteen (15) miles off of any state highway classified to carry the registered weight of the vehicle for purpose of delivery.

- (a) The vehicle shall:
 - 1. Not be required to have a permit for overweight or overlength; and
 - 2. Be within the limits of the registration and within axle weight limits.

(b) An operator shall be required to provide a bill of lading when engaged in the transportation of home building materials.

(2)(a) Travel on all overweight and overdimensional permits shall not be permitted in Boone, Kenton, Campbell, Fayette, Jefferson County (Louisville) or at the Owensboro, Kentucky 2155 bridge from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m. Monday through Friday.

(b) An overweight or overdimensional load originating in Fayette County shall be exempt from traffic rush hour restrictions on Interstate 64 and Interstate 75 and on connecting routes to both interstates up to a distance of three (3) miles from the interstates.

(3) If satisfactory proof of an emergency is furnished to the Division of Motor Carriers, moves may be authorized during the hours restricted pursuant to KRS 189.270(11)(a).

(4) The provisions of this section shall not apply to farm implements or equipment as defined in Section 1(4) of this administrative regulation if the farm implement or equipment:

- (a) Is less than twelve (12) feet wide;
 - (b) Is used in part for off-road use; and
 - (c) Is not transporting cargo.
- (5) Travel shall not be made in excess of the posted limitations on any bridge or other highway structure.

Section 20. ~~Inclement~~^[Section 17.] Weather Conditions. (1) Moves of overdimensional loads~~[more than twelve (12) feet wide]~~ shall not be made on any highway if any of the following weather conditions exist:

(a) Winds sufficient to cause the wheels of the trailer to deflect more than six (6) inches from the path of the wheels of the drawing vehicle;

(b) Wind velocity exceeding twenty-five (25) MPH;

(c) Snow or ice covered highways; or

(d) Driving rain, fog, snow, or other atmospheric conditions that restrict visibility; [If wind velocity exceeds twenty five (25) MPH]

(2)~~[If]~~ Adverse weather~~conditions~~ or road conditions that the Kentucky State Police have determined~~would cause these moves~~ to be dangerous.

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Section 21.~~[Section 18.]~~ Brakes. (1) The number, type, size and design of brake assemblies required to assist the towing vehicle in controlling and stopping a manufactured home or boat shall be sufficient to assure that the maximum stopping distance from an initial velocity of twenty (20) miles per hour does not exceed forty (40) feet.

(2) Manufactured homes ~~that which~~ are not equipped with brakes on all axles shall certify that the towing unit has sufficient brake assemblies to meet the braking distance specified in this section. Certification shall be in the form of:

(a) A manufacturer's statement;

(b) Documented technical data; or

(c) An engineering analysis or its equivalent stating that the braking distance has been met.~~[(a) This certification shall be in the form of a manufacturer's statement, documented technical data, or adequate engineering analysis or its equivalent, specifying that the braking distance requirement has been met.]~~

~~(3) The certification~~~~[(b) This certificate]~~ shall be carried in the towing unit at all times and shall be presented upon request~~[-]~~ to any law enforcement officer.

Section 22.~~[Section 19.]~~ Annual Farm Equipment Permits. (1) An annual permit shall not be issued for the movement of the following:

(a) Self-propelled farm equipment ~~that which~~ exceeds thirteen (13) feet eleven (11) inches in width;

(b) A motor vehicle transporting farm equipment if the vehicle or load exceeds thirteen (13) feet eleven (11) inches in width unless the transporter is a farm equipment dealer transporting farm equipment from ~~the his~~ dealership to a farm, or from a farm to ~~the his~~ dealership;

(c) A motor vehicle transporting farm equipment ~~that which~~ exceeds sixteen (16) feet in width;

(d) Farm equipment if the length of the trailer and towing unit combined exceeds ninety-five (95) feet in length;

(e) Farm equipment if the length of the straight truck and load exceeds fifty-five (55) feet; or

(f) A motor vehicle transporting farm equipment if the power unit does not have sufficient horsepower or braking capacity to safely handle the load being transported.

(2) A permit for the movement of farm equipment with a width greater than twelve (12) feet but ~~not exceeding~~~~which does not exceed~~ sixteen (16) feet shall only be:

(a) Issued to a farm equipment dealer; and

(b) Valid ~~if when he is transporting~~ the farm equipment is transferred from a his dealership to a farm or from a farm to a his dealership.

(3) A motor vehicle for which a permit ~~is was~~ issued to a farm equipment dealer to transport farm equipment with a width greater than thirteen (13) feet eleven (11) inches shall be:

(a) Titled, registered and licensed in Kentucky; or

(b) Apportioned licensed in another jurisdiction to operate in Kentucky.

Section 23.~~[24.]~~ Denial of Permit Application. (1) In accordance with 23 C.F.R. 658.17, the~~Transportation Cabinet,~~ Division of Motor Carriers shall deny a permit application if:

(a) The route includes any portion of the interstate highway system; and

(b) The load is divisible.

(2) The Transportation Cabinet ~~shall may~~ deny or restrict a permit for the use of any route if it ~~is would be~~ detrimental to public safety or convenience. The Transportation Cabinet shall consider the following when making ~~a the~~ determination on the application:

(a) The strength of all bridges and structures on the route;

(b) Traffic congestion on the route;

(c) Horizontal and vertical alignment of the route;

(d) The availability of alternate routes that afford greater safety;

(e) Urban development in residential and commercial areas on the route;

(f) The proximity of schools to the route; and

(g) Any other condition that would unduly compromise public safety and convenience.

Section 24.~~[22.]~~ Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Annual Overweight or Overdimensional Permit", TC Form 95-25, August 2010;

(b) "Housing Moving Application", TC Form 95-310, November 2007;

(c) "Kentucky Overweight or Overdimensional Permit Worksheet", TC Form 95-10 August, 2010.~~[23 C.F.R. 658.17, Truck Size and Weight, Route Designations – Length, Width and Weight Limitations, April 1, 2000;~~

~~(b) 49 C.F.R. 393.11, Lighting Devices, Reflectors, and Electrical Equipment, October 1, 2000;~~

~~(c) Application for Annual Overweight/Overdimensional Permit, TC 95-25, July 1998; and~~

~~(d) Form TC 95-310, House Moving Application, July 2003 edition.]~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Motor Carriers, Transportation Cabinet Building, 200 Mero Street~~[3rd Floor State Office Building, 501 High Street]~~, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.~~[The telephone number is (502) 564-4540.]~~

THOMAS O. ZAWACKI, Commissioner

MIKE HANCOCK, Acting Secretary

APPROVED BY AGENCY: August 11, 2010

FILED WITH LRC: August 12, 2010 at 11 a.m.

CONTACT PERSON: D. Ann Dangelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ann DAngelo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the parameters and procedures for issuing overweight and overdimensional annual and trip permits.

(b) The necessity of this administrative regulation: This administrative regulation is needed to establish the process for permit applications.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 189.270(6) requires the cabinet to promulgate administrative regulations relating to overweight and overdimensional annual and trip permits.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended regulation updates the language and forms of the former administrative regulation which dates to 2003.

(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 update the forms and procedures for the permitting process, update safety language for escort and towing vehicles, add language regarding bulldozers and front end loaders, add language regarding moves during inclement weather conditions, add language that exempts loads originating in Fayette Co. on I64 and I75 from rush hour restrictions, add language that will allow farm equipment to obtain a permit to operate on a fully controlled access highway within certain parameters and add language regarding the permitting process for vehicles moving containerized ocean-going cargo units.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to insure that the most current information is available to the public regarding permit applications. These amendments are necessary to change and update current procedures regarding the permit application process.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment updates cabinet procedures and industry standards for the movement of motor vehicles with divisible or nondivisible loads exceeding legal weights or dimensions.

(d) How the amendment will assist in the effective administration

tion of the statutes: Persons applying for an overweight or overdimensional trip permit will have the most current information as to procedures and forms.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation impacts entities and individuals currently operating with an annual or a trip permit as well as future applicants for permits. It also impacts the cabinet's Division of Motor Carriers that issues the permits.

(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 additional costs or fees as a result of this amendment. The issuance cost of an annual and trip permit already established by KRS 189.270.

(c) As a result of compliance, what benefits will accrue to the entities identified in questions (3): Entities and individuals that qualify will be able to obtain special overweight or overdimensional permits.

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

(a) Initially: No costs are associated with these amendments.

(b) On a continuing basis: There are on-going costs related to administration of the permitting process within the cabinet and enforcement of the regulation. These amendments should not increase the current cost of the process.

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

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

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

(8) TIERING: Is tiering applied? Yes. Tiering is applied because restrictions on travel vary depending on safety issues and length of trip (single trip v. annual).

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts procedures in the Division of Motor Carriers.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 189.270(6), 189.271(9)(b), 189.2715(1), 189.2717(1).

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

(d) How much will it cost to administer this program for subsequent years? No subsequent costs are anticipated.

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

Revenues (+/-)

Expenditures (+/-)

Other Explanation:

STATEMENT OF EMERGENCY 921 KAR 2:040E

This emergency administrative regulation, 921 KAR 2:040E, Procedures for determining initial and continuing eligibility, is necessary due to federally required changes to the application forms and processes used in the Supplemental Nutrition Assistance Program (formerly called the Food Stamp Program) on August 1, 2010, as provided in the final rule issued January 2010 for the Farm Security and Rural Investment Act of 2002. The amendment ensures timely implementation of, and compliance with, the new federal requirements and provides for the alignment of the Supplemental Nutrition Assistance Program with other public assistance programs, such as K-TAP, Medicaid, and State Supplementation, as governed by this administrative regulation, for the consuming public's ease. An ordinary administrative regulation would not allow the agency to meet the federally required implantation date of August 1, 2010. This ordinary administrative regulation is not identical to the emergency administrative regulation due to clarification and correction made to the eligibility period for a State Supplementation recipient. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

STEVEN L. BESHEAR, Governor

JANIE MILLER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Family Support (Emergency Amendment)

921 KAR 2:040E. Procedures for determining initial and continuing eligibility.

RELATES TO: KRS 205.010, 205.200, 205.245, 42 U.S.C. 601-619

STATUTORY AUTHORITY: KRS 194A.050(1), 205.200(2)

EFFECTIVE DATE: July 23, 2010

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS Chapter 205 requires the Cabinet for Health and Family Services to administer the following public assistance programs: Kentucky Transitional Assistance Program (K-TAP) [or "K-TAP"] and State Supplementation Program (SSP) [or "SSP"]. KRS 205.200(2) requires the cabinet to prescribe, by administrative regulation, the conditions of eligibility for public assistance, in conformity with Title IV-A of the Social Security Act, 42 U.S.C. 601-619 and federal regulations. This administrative regulation establishes the procedures used to determine initial and continuing eligibility for assistance under these programs.

Section 1. Eligibility Determination Process. (1) A household shall, for the month payment is intended to cover the household, meet the eligibility criteria in:

(a) 921 KAR 2:006 and 921 KAR 2:016 for K-TAP; or

(b) 921 KAR 2:015 for SSP.

(2) A household shall not receive:

(a) Assistance until approval of the application for benefits; or

(b) Benefits prior to application.

(3) Each decision regarding eligibility for assistance shall be supported by facts recorded in the applicant's or recipient's case record.

(4) The applicant or recipient shall be the primary source of information and shall be required to:

(a) Furnish verification of:

1. Income;
2. Resources; and
3. Technical eligibility; and

(b) Give written consent to contacts necessary to verify or clarify a factor pertinent to the decision of eligibility.

(5) If informed in writing of the appointment or necessary information to be provided, failure of the applicant or recipient to appear for a scheduled interview or present required information at the time requested shall be considered a failure to present adequate proof of eligibility.

(6)(a) An application shall be considered filed if a PA-77, Intent to Apply for Medicaid and/or K-TAP (Cash Assistance), or a KIM-100, KAMES Application, containing the name, address, and signature of the applicant is received by a DCBS office.

(b) An application shall be processed after the:

1. Applicant or representative is interviewed;
2. Required information and verification for the application is provided to the DCBS office; and

3. Application and related documents are received by the DCBS office.

(c) [An applicant shall comply with the application requirements to determine initial eligibility for K-TAP or SSP as established in 921 KAR 3:030.

(b) If an electronic form is not used, the cabinet shall record information for recertification to determine continuing eligibility for K-TAP [as established in 921 KAR 3:030, or] by using form [Form, "PR-1, Program Recertification"]].

Section 2. Continuing Eligibility. (1) The recipient shall be responsible for reporting, within ten (10) calendar days, any change in circumstances which may affect eligibility or the amount of payment.

(2) Eligibility shall be redetermined:

(a) If a report is received or information is obtained about changes in circumstances;

(b) Every twenty-four (24) months for SSP cases in which Supplemental Security Income or "SSI" is not received; and

(c) Every twelve (12) months for K-TAP cases.

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

(a) "KIM-100, KAMES Application", edition 8/10;

(b) "PA-77, Intent to Apply for Medicaid and/or K-TAP (Cash Assistance)", edition 8/10; and

(c) "PR-1, Program Recertification", edition 1/03["is incorporated by reference].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

PATRICIA R. WILSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: July 6, 2010

FILED WITH LRC: July 23, 2010 at 4 p.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502)-564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Dearing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures used to determine initial and continuing eligibility for public assistance programs, Kentucky Transitional Assistance Program (K-TAP) and State Supplemental Program for persons who are aged, blind, or have a disability

(State Supplementation or SSP).

(b) The necessity of this administrative regulation: This administrative regulation is needed to establish the process for eligibility determination and redetermination for individuals receiving public assistance.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by prescribing the processes for application and initial and ongoing eligibility determinations for the public assistance programs, K-TAP and State Supplementation.

(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 through its outline of eligibility determination and redetermination processes for K-TAP and State Supplementation.

(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 is being amended to incorporate by reference form PA-77, Intent to Apply for Medicaid and/or K-TAP (Cash Assistance), and the application for the Kentucky Automated Management and Eligibility System (KAMES), form KIM-100, KAMES Application. The amendment also makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary due to federally required changes to the application form and processes used in the Supplemental Nutrition Assistance Program (formerly called the Food Stamp Program) on August 1, 2010, as provided in the final rule issued January 2010 for the Farm Security and Rural Investment Act of 2002. The amendment ensures compliance with the new federal requirements with consideration to the least impact to individuals who apply for other public assistance programs, such as K-TAP, Medicaid, and State Supplementation.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by ensuring compliance and coordination between federal application and eligibility process requirements for K-TAP and State Supplementation with other public assistance programs.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the administration of the statutes by prescribing initial and ongoing eligibility application and determination processes for K-TAP and State Supplementation in conformity and consideration of federal requirements governing the Supplemental Nutrition Assistance and Medicaid Programs.

(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 families who are receiving assistance from K-TAP and SSP. Including the PA-77 and KIM-100 will affect Kinship Care and Medicaid. In May 2010, there were 3,668 K-TAP, 354 Kinship Care, 205 SSP and 28,015 Medicaid applications taken.

(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 amendment to this administrative regulation will not require a new action on the part of affected entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will create no cost to affected entities. As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation will ensure compliance with new federal requirements governing the application and eligibility processes for the Supplemental Nutrition Assistance Program and will coordinate that compliance with other public assistance programs, K-TAP and State Supplementation, to avoid duplicative

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application forms and processes for affected entities.

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

(a) Initially: The amendment to this administrative regulation is technical and conforming in nature and does not have a fiscal impact.

(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and does not have a fiscal impact.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Title IV-A or TANF, state general funds used to meet Maintenance of Effort for Title IV-A or TANF requirements, and state general funds for State Supplementation are the funding source for this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 601-619

2. State compliance standards. KRS 194A.050(1), 205.200(2)

3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? 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. The justification for the imposition of a stricter standard, or additional or different responsibilities or requirements, is not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services 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 194A.050(1), 205.010, 205.200, 205.245, and 42 U.S.C. 601-619

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The K-TAP program has been operational since October 1996 and does not directly generate any revenue. The State Supplementation program has been operational since December 1973. This admin-

istrative regulation will not generate any additional revenues in subsequent years.

(c) How much will it cost to administer this program for the first year? The K-TAP program has been operational since October 1996. The State Supplementation program has been operational since December 1973. This administrative regulation will not require any additional cost in the first year. The amendment to this administrative regulation provides for the avoidance of federal financial penalty.

(d) How much will it cost to administer this program for subsequent years? The K-TAP program has been operational since October 1996. The State Supplementation program has been operational since December 1973. This administrative regulation will not require any additional costs in subsequent years. The amendment to this administrative regulation provides for the avoidance of federal financial penalty.

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 921 KAR 3:030E

This emergency administrative regulation, 921 KAR 3:030E, Application process, is, necessary due to federally required changes to the application forms and processes used in the Supplemental Nutrition Assistance Program (formerly called the Food Stamp Program) on August 1, 2010, as provided in the final rule issued January 2010 for the Farm Security and Rural Investment Act of 2002; and guidance from the Kentucky State Board of Elections regarding voter registration. The amendment ensures timely implementation of, and compliance with, the new federal final rule; provides for the alignment of the Supplemental Nutrition Assistance Program with other public assistance programs, such as Kentucky Transitional Assistance Program (K-TAP), Medicaid, and State Supplementation, for the consuming public's ease; and revises voter registration material in accordance with the National Voter Registration Act. An ordinary administrative regulation would not allow the agency to meet the federally required implantation date of August 1, 2010, or have timely congruency with the National Voter Registration Act. This ordinary administrative regulation is identical to the emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

STEVEN L. BESHEAR, Governor
JANIE MILLER, Secretary

CABINET FOR HEALTH & FAMILY SERVICES Department for Community Based Services Division of Family Support (Emergency Amendment)

921 KAR 3:030E. Application process.

RELATES TO: KRS 116.048, 7 C.F.R. 273.2, 273.10, 42 U.S.C. 1973gg-5, 7 U.S.C. 2020(e)(2)(B)(ii), (iii), (iv), 42 U.S.C. 2000d, Presidential EO 13166

STATUTORY AUTHORITY: KRS 116.048(1), 194A.050(1), 7 C.F.R. 271.4, 7 U.S.C. 2020(e)(2)(B), 7 U.S.C. 2011-2029, 42 U.S.C. 1973gg-5

EFFECTIVE DATE: July 23, 2010

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 7 U.S.C. 2011 to 2029 and 7 C.F.R. 271.4 authorize the cabinet to administer a Food Stamp Program

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and prescribes the manner in which the program shall be implemented. 7 U.S.C. 2020(e)(2)(B) requires the cabinet to develop a uniform application process. KRS 116.048(1) designates the cabinet as a voter registration agency in accordance with 42 U.S.C. 1973gg-5. This administrative regulation establishes the application and the voter registration processes used by the cabinet in the administration of the Food Stamp Program.

Section 1. Right to Apply or Reapply. (1) An individual shall have the right to apply or reapply for food stamp benefits on the same day that the household first contacts the Department for Community Based Services (DCBS) office in person during office hours.

(2) The cabinet shall make the application process readily accessible to a household.

(3) In accordance with the procedures described in 920 KAR 1:070, interpreter services shall be provided for a person who is:

- (a) Deaf; or
- (b) Hard of hearing.

(4) In accordance with 42 U.S.C. 2000d and Presidential EO 13166, interpreter services shall be provided for a person who is Limited English Proficient.

(5) An application shall be considered filed if:

(a) A FS-1, Application for SNAP, ~~[a KIM-77, Intent to Apply, or a KIM-100, KAMES Application,]~~ containing the name, address, and signature of the applicant ~~[and any applicable supplements,]~~ is received by a DCBS office; or

(b) Application for benefits and another public assistance program is made in accordance with 921 KAR 2:040 and Section 6 of this administrative regulation.

(6) An application shall be processed after the:

(a) Applicant or representative is interviewed;

(b) Required information and verification for the application is provided to the DCBS office; and

(c) Application and related documents are received by the ~~[appropriate]~~ DCBS office, as specified in Section 3(1) of this administrative regulation.

Section 2. Who May Sign an Application. An application for food stamps shall be signed by:

- (1) An adult or emancipated child who is a responsible member of the household; or
- (2) The household's authorized representative.

Section 3. Where an Application is Filed. (1) Except as provided in subsection (2) of this section, an application shall be filed in any DCBS office ~~[and processed in the county in which an applicant resides].~~

(2) A concurrent application for Supplemental Security Income (SSI) and Food Stamps shall be filed in the service area office of the Social Security Administration.

Section 4. Prompt Action on an Application. The cabinet shall provide an eligible household that completes the initial food stamp application process an opportunity to participate as soon as possible. The cabinet shall not provide an opportunity to participate later than:

(1) Thirty (30) days after the application is filed for a household ineligible for expedited services; or

(2) The fifth calendar day following the date an application is filed for a household eligible for expedited services.

Section 5. Expedited Service. The cabinet shall provide expedited services to a household that is eligible in accordance with 7 C.F.R. 273.2(i).

Section 6. Public Assistance Application Process. (1) A household in which every member is applying for Kentucky Transitional Assistance Program (KTAP) shall be allowed to simultaneously apply for food stamp benefits. A single interview shall be conducted for both programs.

(2) Time standards specified in Section 4 of this administrative regulation shall not apply to a public assistance application. A public assistance application shall be governed by the time standards

specified in 921 KAR 2:035, Section 4.

(3) A household in which every member receives, or is authorized to receive, SSI shall be considered categorically eligible unless:

(a) The entire household is institutionalized; ~~[-~~

~~1. Institutionalized; or~~

~~2. Disqualified from receiving food stamps; or]~~

(b) A household member is ineligible due to a drug-related felony conviction;

(c) A household member is disqualified due to an intentional program violation specified in 921 KAR 3:010; or

(d) The head of the household is disqualified for failure to comply with the work requirements specified in 921 KAR 3:042.

(4) A household in which any member receives, or is authorized to receive cash, in-kind, or other benefits funded under Temporary Assistance for Needy Families Block Grant ~~[temporary assistance for needy families]~~ (TANF) shall be considered categorically eligible unless:

(a) The entire household is institutionalized; ~~[-~~

~~1. Institutionalized; or]~~

2. Disqualified from receiving food stamps; or

(b) A household member is ineligible due to a drug-related felony conviction;

(c) A household member is disqualified due to an intentional program violation specified in 921 KAR 3:010; or

(d) The head of household is disqualified for failure to comply with the work requirements specified in 921 KAR 3:042.

(5) If verified by the program or service conferring categorical eligibility status, a categorically eligible household shall not be required to verify the following eligibility factors:

(a) Resources;

(b) Gross and net income ~~[limits]~~;

(c) Social Security number ~~[information]~~;

(d) Sponsored alien information; and

(e) Residency.

Section 7. Joint SSI and Food Stamp Application Process. A household in which every member is an applicant or recipient of SSI shall be allowed to simultaneously apply for both SSI and food stamps as specified in Section 3(2) of this administrative regulation.

Section 8. Voter Registration. (1) In accordance with KRS 116.048 and 42 U.S.C. 1973gg-5, a food stamp applicant or recipient shall be provided the opportunity to complete an application to register to vote or update current voter registration if the applicant or recipient is:

(a) Age eighteen (18) or over; and

(b) Not registered to vote or not registered to vote at his current address.

(2) PAFS-706, Voter Registration Rights and Declination, shall be utilized to document a Food Stamp Program applicant or recipient's choice to:

(a) Register to vote; ~~[or]~~

(b) Not register to vote; or

(c) Indicate that they are currently registered to vote.

(3) A voter registration application issued by the Board of Elections shall be completed if a Food Stamp Program applicant or recipient wants to:

(a) Register to vote; or

(b) Update voter registration to provide a new address.

(4) The voter registration process shall not apply to an individual not included in the assistance application, such as an authorized representative.

(5) All information utilized in the voter registration process shall remain confidential and be used only for voter registration purposes.

(6) The State Board of Elections shall approve the application to register to vote and send a confirmation or denial notice to the voter registration applicant.

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

(a) "FS-1, Application for SNAP", edition 8/10; and ~~["KIM-77,~~

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Intent to Apply", edition 8/08;]

- (b) ~~"KIM-100, KAMES Application", edition 8/08;~~
- (c) ~~"KIM-100, Supplement A, Representative/Interested Party", edition 8/08;~~
- (d) ~~"KIM-100, Supplement B, Utility/Shelter Information", edition 8/08;~~
- (e) ~~"KIM-100, Supplement C, Additional Members/Striker and Boarder Information", edition 8/08;~~
- (f) ~~"KIM-100, Supplement D, Farm/Self Employment/Rental Income", edition 8/08;~~
- (g) ~~"KIM-100, Supplement E, Vehicles", edition 8/08;~~
- (h) ~~"KIM-100, Supplement F, Emergency Shelter/Foster Care", edition 8/08;~~
- (i) ~~"KIM-100, Supplement G, Member General Information", edition 8/08;~~
- (j) ~~"KIM-100, Supplement H, IM Alien Information", edition 8/08;~~
- (k) ~~"KIM-100, Supplement I, State Supplementation/Pass Through", edition 8/08;~~
- (l) ~~"KIM-100, Supplement J, Long Term Care", edition 8/08;~~
- (m) ~~"KIM-100, Supplement L, General Deprivation", edition 8/08;~~
- (n) ~~"KIM-100, Supplement M, Incapacity/Unemployment", edition 8/08;~~
- (o) ~~"KIM-100, Supplement N, Deprivation", edition 8/08;~~
- (p) ~~"KIM-100, Supplement P, DSC Cooperation/Absence Verification", edition 8/08;~~
- (q) ~~"KIM-100, Supplement PP, AP Referral", edition 8/08;~~
- (r) ~~"KIM-100, Supplement Q, KWP/Work Registration", edition 8/08;~~
- (s) ~~"KIM-100, Supplement R, Earned Income", edition 8/08;~~
- (t) ~~"KIM-100, Supplement S, Unearned Income", edition 8/08;~~
- (u) ~~"KIM-100, Supplement SS, Lump Sum/Pass Income", edition 8/08;~~
- (v) ~~"KIM-100, Supplement T, Resources", edition 8/08;~~
- (w) ~~"KIM-100, Supplement U, Medical Expenses", edition 8/08;~~
- (x) ~~"KIM-100, Supplement V, Health Insurance", edition 8/08;~~
- (y) ~~"KIM-100, Supplement W, KAMES Integration Supplement - Lock In & KenPAC", edition 8/08;~~
- (z) ~~"KIM-100, Supplement X, IM Nonmember", edition 8/08;~~
- (aa) ~~"KIM-100, Supplement XX, KAMES Integration Supplement - FS Non-members", edition 8/08;~~
- (bb) ~~"KIM-100, Supplement Y, Student Information", edition 8/08; and~~
- (cc) ~~"PAFS-706, Voter Registration Rights and Declination", edition 8/10[8/08].~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

PATRICIA R. WILSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: July 23, 2010

FILED WITH LRC: July 23, 2010 at 4 p.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Dearing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application and the voter registration processes used by the cabinet in the administration of the Supplemental Nutrition Assistance Program (SNAP).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish uniform application standards for SNAP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing an application processes for SNAP and related voter registration

processes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by establishing procedures used by the cabinet in the administration of SNAP and voter registration 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 incorporate by reference a new SNAP application form, FS-1, Application for SNAP; remove the current application KIM-100, KAMES Application, and form KIM-77, Intent to Apply, currently incorporated by reference; simplify and clarify form PAFS-706, Voter Registration Rights and Declination; and makes technical corrections.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary due to federally required changes to the application form and processes used in the Supplemental Nutrition Assistance Program (formerly called the Food Stamp Program) as provided in the final rule, issued January 2010, for the Farm Security and Rural Investment Act of 2002. The amendment ensures compliance with the new federal requirements, specifically the requirement for a state to make available a complete SNAP application on the state agency's website by August 1, 2010. The amendment also makes technical corrections to ensure alignment with application processes used in other public assistance programs and compliance with KRS 13A, and it simplifies the voter registration form in accordance with guidance received from the Kentucky Board of Elections.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the authorizing statutes by implementing the requirements of the federal final rule and outlining the cabinet's process for voter registration as required by KRS 116.048.

(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 through its compliance with federal requirements and alignment with other public assistance programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 779,000 individuals in 354,000 households are currently participating in SNAP in Kentucky. All SNAP recipients and potential applicants are 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: This amendment will not require any additional actions on the part of SNAP applicants or recipients.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment does not involve a cost to a SNAP applicant or recipient.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): SNAP applicants and recipients will benefit from the amendment to this administrative regulation by having available a simplified application form and a simplified Voter Registration Rights and Declination form.

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

(a) Initially: No additional funding is required.

(b) On a continuing basis: No additional funding is required.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of the funding will be SNAP Federal Funds and matching General or State funds. The funding has been appropriated in the enacted budget.

(7) Provide an assessment of whether an increase in fees or

funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There are no fees and no increase in funding for this administrative regulation.

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

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering is not applied because this administrative regulation will be applied in a like manner statewide

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 273.2, 7 U.S.C. 2011-2029, and 42 U.S.C. 1973gg-10.

2. State compliance standards. KRS 116.048, 194A.050(1)

3. Minimum or uniform standards contained in the federal mandate. The provisions of this administrative regulation comply with the Federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendment to 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. The justification for the imposition of a stricter standard, or additional or different responsibilities or requirements, is not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Contact Person: Justin Dearing

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services 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 116.048, 194A.050(1), 7 C.F.R. 271.4, 273.2, and U.S.C. 2011-2029.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation does not generate revenue and will not generate any additional revenue 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?

This administrative regulation does not generate revenue and will not generate any additional revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? This amendment will not require any additional costs during the first year. The amendment to this administrative regulation provides for the avoidance of federal financial penalty.

(d) How much will it cost to administer this program for subsequent years? This amendment will not require any additional costs during subsequent years. The amendment to this administrative regulation provides for the avoidance of federal financial penalty.

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

EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended at ARRS, August 10, 2010)

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, and, if a passing score is established in this subsection, the applicant shall achieve the passing score or higher:

(a) Art:

1. "Art: Content Knowledge (0133)" - 158; and

2. "Art Making (0131)" - 154;

(b) French: "French: World Language~~[Content Knowledge]~~ (0174)~~[(0173)]~~" - 159;

(c) German: "German: World Language~~[Content Knowledge]~~ (0183)~~[(0184)]~~" - 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) [(#)]~~ Instrumental Music:

1. "Music: Content Knowledge (0113)" - 154; and

2. "Music: Concepts and Processes (0111)" - 145;

~~(h) [(#)]~~ Vocal Music:

1. "Music: Content Knowledge (0113)" - 154; and

2. "Music: Concepts and Processes (0111)" - 145;

~~(i) [(#)]~~ Latin: "Latin (0600)" - 700;

~~(j) [(#)]~~ Physical Education:

1. "Physical Education: Content Knowledge (0091)" - 147; and

2. "Physical Education: Movement Forms-Analysis and Design (0092)" - 151;

~~(k) [(#)]~~ School Media Librarian: "Library Media Specialist (0311)~~[(0310)]~~" - ~~156~~140;

~~(l) [(#)]~~ School Psychologist: "School Psychologist (0401)" - 161; or

~~(m) [(#)]~~ Spanish: "Spanish: World Language~~[Content Knowledge]~~ (0195)~~[(0194)]~~" - ~~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;

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(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, **and, if a passing score is established in this paragraph, the applicant shall achieve the passing score or higher:**

1. Agriculture: "Agriculture (0700)" - 520;

2. Business and Marketing Education: "Business Education (0101)~~(0100)~~" - ~~599~~;

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;~~[et]~~

(c) Gifted Education, grades ~~primary~~~~[preschool]~~ - twelve (12): "Gifted Education (0357)" – 152;~~or~~~~[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)", **with a passing score of--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)", **with a passing score of--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)", **with a passing score of--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)", **with a passing score of--161;**

(b) "Principles of Learning and Teaching: Grades five (5) - nine

(9) (0523)", **with a passing score of--161;** or

(c) "Principles of Learning and Teaching: Grades seven (7) - twelve (12) (0524)", **with a passing score of--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)", **with a passing score of--161;** or

(b) "Principles of Learning and Teaching: Grades seven (7) - twelve (12) (0524)", **with a passing score of--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)", **with a passing score of--161;**

(b) "Principles of Learning and Teaching: Grades five (5) - nine (9) (0523)", **with a passing score of--161;** or

(c) "Principles of Learning and Teaching: Grades seven (7) - twelve (12) (0524)", **with a passing score of--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; **or**

(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

VOLUME 37, NUMBER 3 – SEPTEMBER 1, 2010

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.

EDUCATION PROFESSIONAL STANDARDS BOARD (As Amended at ARRS, August 10, 2010)

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 certification 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)(a) The certificate for school principal shall be valid for serving in the position of principal or assistant principal.

(b) 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.

(c) 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 as required by 16 KAR 7:020 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 ~~successful completion of 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 Educational Testing Service (ETS)~~[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 ex-

amination 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

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.

KENTUCKY STATE BOARD OF ELECTIONS (As Amended at ARRS, August 10, 2010)

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. 1973ff-1

STATUTORY AUTHORITY: KRS 116.045(4)(e), 117.079 [417.015(1)(a)], 117.086(1), 42 U.S.C. 1973ff, 1973ff-1

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.079 requires the State Board of Elections 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. ~~[447.045(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(4)(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 117.086(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 the [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 for all elections that occur after the date the application is received until the next general election 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 ~~when [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 the voter's [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 the voter's [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);

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(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.

**KENTUCKY STATE BOARD OF ELECTIONS
(As Amended at ARRS, August 10, 2010)**

**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 116.045(4)(e), 117.015(1)(a),
117.079, 117.086(1), 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(4)(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) Dependent of a member of the Military; or

(c) 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 **Federal Post Card Application [FPCA]**, to send a blank absentee ballot, and to send election related materials.

(3) The county clerk shall accept any properly completed Federal Post Card Application received electronically for the purposes of voter registration and application for an absentee ballot for all elections that occur after the date the application is received until the next general election from any registered voter as defined by this administrative regulation.

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 **a PDF copy [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.

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(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 the voter's ~~[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 by utilizing the Absentee Ballot Status Inquiry System on the State board of Elections' Web site, <http://www.elect.ky.gov/>.~~

(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.

FINANCE AND ADMINISTRATION CABINET Kentucky Retirement Systems (As Amended at ARRS, August 10, 2010)

105 KAR 1:370. Kentucky Retirement Systems Personnel Policies.

RELATES TO: KRS Chapter 11A, 16.505 - 16.652, 18A.095, 61.394, 61.510 - 61.705, 78.510 ~~[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. 2604-]~~ 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 16.505 to 16.652, 61.510 to 61.705, and 78.510 ~~[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. An employee of the Kentucky Retirement Systems shall comply with the Kentucky Retirement Systems Personnel Policies.

~~[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.

CONTACT PERSON: Jennifer A. Jones, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8815.

GENERAL GOVERNMENT
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 29 ~~[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, ~~humans[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 box-cars, 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 struc-

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~~tural 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 established 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
(As Amended at ARRS, August 10, 2010)

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 shall 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 viola-

tions.

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 struc-

tures 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 established 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 organism 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. 136 et. seq[14]. 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 sub-

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section (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; ~~and~~

(d) "Consumer Disclosure Form", 2010.

(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. This material may also be obtained at www.kyagr.com.

RICHIE FARMER, Commissioner

APPROVED BY AGENCY: June 15, 2010

FILED WITH LRC: June 15, 2010 at noon

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.

**ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Permits
(As Amended at ARRS, August 10, 2010)**

405 KAR 8:010. General provisions for permits.

RELATES TO: KRS 61.870-61.884, 146.200-146.360, 322.010(3), 322.340, 350.020, 350.055, 350.060, 350.070, 350.085, 350.090, 350.130, 350.135, 350.450, 350.465, 424.110-424.120, 27 C.F.R. 555.206, 555.218, 555.219, 555.220, 30 C.F.R. 77.1301(c), 730-733, 735, 775, 777, 778.17, 870, 917, 16 U.S.C. 470aa-mm, 661-667e16, 668a, 703-712, 1531-1544~~[350.020, 350.055, 350.060, 350.070, 350.085, 350.090, 350.130, 350.135, 350.450, 350.465, 27 C.F.R. 55.206, 55.218, 55.219, 55.220, 30 C.F.R. 77.1301(c), 30 C.F.R. Parts 730-733, 735, 773-775, 777,~~

~~778.17, 917, 16 U.S.C. 470 et seq., 661 et seq., 66A, 703 et seq., 4543 et seq.]~~, 30 U.S.C. 1253, 1255-1261, 1263-1266, 1272

STATUTORY AUTHORITY: KRS ~~[Chapter 13A.]~~ 350.020, 350.028, 350.060, 350.135, 350.450, 350.465, 30 C.F.R. Parts 730-733, 735, 773-775, 777, 778.17, 917, 16 U.S.C. 661-667e16, 668a, 703-712, 1531-1544~~[470 et seq., 661 et seq., 66A, 703 et seq., 4543 et seq.]~~, 30 U.S.C. 1253, 1255-1261, 1263-1266, 1272

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028 ~~and 350.465 require [Chapter 350 in pertinent part requires]~~ the cabinet to promulgate rules and administrative regulations pertaining to permits for surface coal mining and reclamation operations. This administrative regulation provides for permits to conduct these operations. The administrative regulation specifies when permits are required, application deadlines, requirements for applications for permanent program permits, fees, verification of applications, public notice requirements, submission of comments on permit applications, the right to file objections, informal conferences, review of the permit applications, criteria for application approval or denial and relevant actions, term of the permits, conditions of permits, review of outstanding permits, revisions of permits, amendments, renewals, transfers, assignments, ~~and~~ sales of permit rights, administrative and judicial review, and procedures relating to improvidently issued permits.

Section 1. Applicability. Excluding coal exploration operations, this administrative regulation shall apply to ~~all~~ applications, ~~all~~ actions regarding permits, and ~~all~~ surface coal mining and reclamation operations.

Section 2. General Requirements. (1) Permanent program permits required. A person shall not~~[No person shall]~~ engage in surface coal mining and reclamation operations unless that person has first obtained a valid permanent program permit under this chapter for the area to be affected by the operations.

(2) General filing requirements for permanent program permit applications.

(a) Each person who intends to engage in surface coal mining and reclamation operations shall file a complete and accurate application for a permanent program permit ~~that~~which shall comply fully with ~~all~~ applicable requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24, and shall not begin the operations until the permit has been granted.

(b) Renewal of valid permanent program permits. An application for renewal of a permit under Section 21 of this administrative regulation shall be filed with the cabinet at least 120 days before the expiration of the permit.

(c) Revision of permanent program permits. A permittee may~~[-, at any time,]~~ apply for a revision of a permit, but shall not vary from the requirements of the permit until the revision has been approved by the cabinet. The term of a permit shall remain unchanged by a revision.

(d) Succession to rights granted under prior permanent program permits.

1. An application for the transfer, sale, or assignment of rights granted under a permit may be submitted.

2. ~~[at any time.]~~ The actual transfer, sale, or assignment of permit rights shall~~[-, however, may]~~ not take place until written permission has been granted by the cabinet.

(e) Amendment of permanent program permits. A permittee may~~[-, at any time,]~~ apply for an amendment to a permit under Section 23 of this administrative regulation, but shall not begin surface coal mining and reclamation operations on the areas until the amendment has been approved by the cabinet. The term of a permit shall remain unchanged by an amendment.

(3) Compliance with permits. A~~[Any]~~ person engaging in surface coal mining and reclamation operations under a permit issued pursuant to KRS Chapter 350 shall comply with the terms and conditions of the permit, including the plans and other documents submitted as part of the application and approved by the cabinet~~[-]~~ and the applicable requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

Section 3. Coordination of Review of Permit Applications. (1) For the purposes of avoiding duplication, the cabinet shall coordi-

nate the review and issuance of permits for surface coal mining and reclamation operations with:

(a) Any other federal or Kentucky permit process applicable to the proposed operations, as required by Section 503 of SMCRA, **30 U.S.C. 1201 - 1328 and 30 C.F.R. 700 - 955**; and

(b) Applicable requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.); the Fish and Wildlife Coordination Act of 1934, as amended (16 U.S.C. 661 et seq.); the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703 et seq.); the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 et seq.); and the Bald Eagle Protection Act of 1940, as amended (16 U.S.C. 668a), as required by 30 C.F.R. 773.12.

(2) This coordination shall be accomplished by providing the appropriate agencies with an opportunity to comment on permit applications as set forth in Section 8(6) and (7) of this administrative regulation and, if necessary, by any other measures the cabinet and interested parties may deem appropriate.

Section 4. Preliminary Requirements. **(1)** A person desiring a permit shall submit to the cabinet a **Preliminary Application, MPA-00.**

(2) The Preliminary Application~~[preliminary application of the form and content prescribed by the cabinet. The preliminary application]~~ shall contain pertinent information, including a map at a scale of one (1) inch equals 400 or 500 feet, marked to show the proposed permit area and adjacent areas; and the areas of land to be affected, including, for example~~[but not limited to]~~, locations of the coal seam or seams to be mined, access roads, haul roads, spoil or coal waste disposal areas, and sedimentation ponds.

(a) Areas ~~[see]~~ delineated on the map shall be physically marked at the site; and

(b) In a manner prescribed by the cabinet pursuant to KRS Chapter 350 and 405 KAR Chapters 7 - 24. Personnel of the cabinet shall conduct, within fifteen (15) working days after the filing of the Preliminary Application, an on-site investigation of the area with the person or his or her representatives and representatives of appropriate local, state, or federal agencies, after which the person may submit a permit application.

Section 5. General Format and Content of Applications. **(1)(a)** Applications for permits to conduct surface coal mining and reclamation operations shall be filed in the number, form, and content required by the cabinet, in accordance with KRS 350.060(5) and (6), including a copy to be filed for public inspection under Section 8(8) of this administrative regulation.

(b) The application shall be on forms provided by the cabinet, and originals and copies of the application shall be prepared, assembled and submitted in the number, form and manner prescribed by the cabinet with attachments, plans, maps, certifications, drawings, calculations or other documentation necessary for the cabinet to review the proposed surface coal mining and reclamation operations~~[or relevant information as the cabinet may require]~~.

(c) The following forms~~[which]~~ are required to be submitted by an applicant ~~[applicants, are hereby incorporated by reference]~~:

1. Preliminary Application, MPA-00, August 2010;
2. Permittee Information for a Mining Permit, MPA-01, August 2010;
3. Operator Information for a Mining Permit, MPA-02, August 2010;
4. Technical Information for Mining Permit, MPA-03, August 2010;
5. Surface Owner's Affidavit: Lands Historically Used for Cropland, MPA-03-20.1.B., November 1991;
6. Disinterested Third Party Affidavit: Lands Historically Used for Cropland, MPA-03.20.1.C., November 1991;
7. Update of Permittee or Operator Information, MPA-05, August 2010;
8. Change of Corporate Owners, Officers or Directors, MPA-06, August 2010;
9. Application to Transfer a Mining Permit, MPA-07, August 2010;
10. Revision Application to Change Operator, MPA-08, August 2010;

11. Application for Renewal of a Mining Permit, MPA-09, August 2010;

12. Application for a Coal Marketing Deferment, MPA-10, August 2010; and

13. Minor Field Revision Application Form, SME 80, revised August 2010.~~[11/91;~~

~~2. Permittee Information for a Mining Permit, MPA-01, 11/91;~~

~~3. Operator Information for a Mining Permit, MPA-02, 11/91;~~

~~4. Technical Information for a Mining Permit, MPA-03, 11/91;~~

~~5. Surface Owner's Affidavit: Lands Historically Used for Cropland, MPA-03-20.1.B., 11/91;~~

~~6. Disinterested Third Party Affidavit: Lands Historically Used for Cropland, MPA-03-20.1.C., 11/91;~~

~~7. Application to Revise a Mining Plan, MPA-04, 11/91;~~

~~8. Update of Permittee or Operator Information, MPA-05, 11/91;~~

~~9. Change of Corporate Owners, Officers or Directors, MPA-06, 11/91;~~

~~10. Application to Transfer a Mining Permit, MPA-07, 11/91;~~

~~11. Revision Application to Change Operator, MPA-08, 11/91;~~

~~12. Application for Renewal of a Mining Permit, MPA-09, 11/91;~~

~~13. Application for a Coal Marketing Deferment, MPA-10, 11/91; and~~

~~14. Minor Field Revision Application Form, SME 80, revised 9/91.]~~

~~(d) [These forms may be reviewed or obtained at the Department for Natural Resources, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

~~(e)~~ The application shall be complete with respect to all information required by KAR Title 405 [KAR] and include, at a minimum: for surface mining activities, all the applicable information required under 405 KAR 8:030; for underground mining activities, all the information required under 405 KAR 8:040; and, for special types of surface coal mining and reclamation operations, all the information required under 405 KAR 8:050.

(e) An application shall not~~[No application shall]~~ be determined to be administratively complete unless all design plans for the permit area are in detailed form.

(2) Information set forth in the application shall be current, presented clearly and concisely, and supported by appropriate references to technical and other written material available to the cabinet.

(3) The collection and analysis of ~~[all]~~ technical data submitted in the application shall be planned by or conducted under the direction of a professional qualified in the subject to be analyzed and shall be accompanied by:

(a) Names of persons or organizations which collected and analyzed the data;

(b) Dates of the collection and analyses; and

(c) Descriptions of methodology used to collect and analyze the data.

(4) The application shall state the name, address and position of officials of each private or academic research organization or governmental agency that provided information that~~[who provided information which]~~ has been made a part of the application regarding land uses; soils; geology; vegetation; fish and wildlife; water quantity and quality; air quality~~[soils, geology, vegetation, fish and wildlife, water quantity and quality, air quality,] and archaeological, cultural, and historic features.~~

(5)(a) The applicant shall designate in the permit application either himself or some other person who will serve as agent for service of notices and orders.

1. The designation shall identify the person by full name and complete mailing address, and if a natural person, the person's Social Security number.

2. The person shall continue as agent for service of process until a written revision of the permit has been made to designate another person as agent.

(b) The applicant may authorize a person ~~[designate persons authorized by the applicant]~~ to submit application ~~[to the application]~~ modifications ~~[to the application]~~ to the cabinet. If the designation has not been made in the application, or in separate correspondence, the cabinet shall accept modifications only from the applicant.

(6) General requirements for maps and plans.

(a) If any of the information marked on the preliminary map required under Section 4 of this administrative regulation has changed, the application shall contain an updated USGS seven and one-half (7 1/2) minute topographic map marked as required in Section 4 of this administrative regulation.

(b) 1. Maps submitted with applications shall be presented in a consolidated format, to the extent possible, and shall include the types of information set forth on topographic maps of the U.S. Geological Survey of the 1:24,000 scale series.

2. Maps of the permit area and adjacent areas shall be at a scale of 400 or 500 feet to the inch, inclusive; and the scale shall be clearly shown on the map.

3. A map of scale larger than 400 feet to the inch shall be provided by the applicant if the cabinet determines the larger scaled map is needed to adequately show mine site details.

4. [However, if the cabinet determines that a map scale larger than 400 feet to the inch is required to adequately show mine site details, a map of larger scale shall be provided by the applicant.] The map required by 405 KAR 8:030, Section 23(1)(a) or 405 KAR 8:040, Section 23(1)(a), regarding additional areas on which permits will be sought, shall be a USGS seven and one-half (7 1/2) minute (1:24,000) topographic map.

(c) If a map or drawing is required to be certified by a qualified ~~[registered]~~ professional engineer, as defined by [in] KRS 322.010(3), the map or drawing shall bear the seal and signature of the engineer as required by KRS 322.340 [Chapter 322], and shall be certified in accordance with 405 KAR 7:040, Section 10.

(d) All engineering design plans submitted with an application[applications] shall be prepared by or under the direction of a qualified ~~[registered]~~ professional engineer and shall bear the engineer's seal, signature, and certification as required by KRS 322.340 [Chapter 322] and 405 KAR 7:040, Section 10.

(e) Maps and plans submitted with the application shall clearly identify all previously mined areas as defined at 405 KAR 16:190, Section 7(2)(c) or 405 KAR 18:190, Section 5(2)(c).

(7) Referenced materials. If used in the application, referenced materials shall either be provided to the cabinet by the applicant or be readily available to the cabinet. If provided, relevant portions of referenced published materials shall be presented briefly and concisely in the application by photocopying or abstracting and with explicit citations.

Section 6. Application and Acreage Fees. (1) Each application for a surface coal mining and reclamation permit shall be accompanied by the fees established in this administrative regulation[a fee determined by the cabinet]. The fee may be less than, but shall not exceed the actual or anticipated cost of reviewing, administering and enforcing the permit.

(2) An applicant shall submit an application fee of \$2,500 for an original application or \$1,750 for an amendment.

(3) An applicant shall also submit an additional seventy-five (75) dollars for each acre or fraction thereof of the area of land to be affected by the operation. If the cabinet approves an incremental bonding plan submitted by the applicant, the acreage fees may be paid individually as the bond for each increment is submitted. An acreage fee shall not[However, no acreage fees shall] be required for surface areas overlying underground or auger workings that[which] will not be affected by surface operations and facilities.

(4) [The applicant shall submit an application fee of \$375 for each application, plus an additional seventy-five (75) for each acre or fraction thereof of the area of land to be affected by the operation. If the cabinet approves an incremental bonding plan submitted by the applicant, the acreage fees may be paid individually as the bond for each increment is submitted. However, no acreage fees shall be required for surface areas overlying underground or auger workings which will not be affected by surface operations and facilities.

(3) The fee shall accompany the application in the form of a cashier's check or money order payable to the Kentucky State Treasurer. A permit application shall not[No permit application shall] be processed unless the application fee has been paid.

Section 7. Verification of Application. Applications for permits; revisions; amendments; renewals; or transfers, sales, or assignments of permit rights shall be verified under oath, before a notary public, by the applicant or his authorized representative, that the information contained in the application is true and correct to the best of the official's information and belief.

Section 8. Public Notice of Filing of Permit Applications. (1) An applicant for a permit, major revision, amendment, or renewal of a permit shall place an advertisement in the newspaper of largest bona fide circulation as established[, according to the definition] in KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located.

(2)(a) The first advertisement shall be published on or after:

1. The date the application is submitted to the cabinet; or

2. ~~[- The applicant may elect to begin publication on or after]~~

The date the applicant receives the notification from the cabinet under Section 13(2) of this administrative regulation that the application has been deemed administratively complete and ready for technical review.

(b) The advertisement shall be published at least once each week for four (4) consecutive weeks, with the final consecutive weekly advertisement being published after the applicant's receipt of written notice from the cabinet that the application has been deemed administratively complete and ready for technical review.

~~(c)[(b)]~~ The final consecutive weekly advertisement shall clearly state that it is the final advertisement, and that written objections to the application may be submitted to the cabinet until thirty (30) days after the date of the final advertisement.

(3) Within fifteen (15) days of the final date of publication of the advertisement, the applicant shall submit to the cabinet proof of publication of the required final four (4) consecutive weekly notices, satisfactory to the cabinet in accordance with this section that shall[, which may] consist of an affidavit from the publishing newspaper certifying the dates, place, and content of the advertisements.

(4) The advertisement shall be entitled "Notice of Intention to Mine" and shall be of a form specified in subsection (5) of this section ~~[by the cabinet]~~.

(5) The advertisement shall contain, at a minimum, the following information:

(a) The name and business address of the applicant; ~~[and]~~

(b) A map or description that[which] shall:

1. Clearly show or describe towns, rivers, streams, and other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate distance measurements, necessary to allow local residents to readily identify the proposed permit area;

2. Clearly show or describe the exact location and boundaries of the proposed permit area;

3. State the name of the U.S. Geological Survey 7.5 minute quadrangle map that[map(s) which] contains the area shown or described; and

4. Show the north arrow and map scale, if a map is used[; show the north arrow and map scale, if a map is used].

(c) The location where a copy of the application is available for public inspection under subsection (8) of this section;

(d) The name and address of the cabinet to which written comments, objections, or requests for permit conferences on the application may be submitted under Sections 9, 10, and 11 of this administrative regulation;

(e) If an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate or close a public road; except if[when] public notice and hearing have been previously provided for this particular part of road in accordance with 405 KAR 24:040, Section 2(6); a concise statement describing the public road, the particular part to be relocated or closed, and the approximate timing and duration of the relocation or closing;

(f) A statement, if the application includes a request for an experimental practice under 405 KAR 7:060, ~~[a statement]~~ indicating that an experimental practice is requested that[which] identifies [and identifying] the regulatory requirement for which a variance is requested; and

(g) The application number.

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(6) Within five (5) working days after the application for a permit, major revision, amendment, or renewal of a permit has been determined to be administratively complete, the cabinet shall issue written notification of:

(a) The applicant's intention to conduct surface coal mining and reclamation operations on a particularly described tract of land;

(b) The application number;

(c) Where a copy of the application may be inspected; and

(d) Where comments on the application may be submitted under Section 9 of this administrative regulation.

(7) The written notifications required by subsection (6) of this section shall be sent to:

(a) Local government agencies with jurisdiction over or an interest in the area of the proposed operations, including:

1. Planning agencies;

2. Sewage or water treatment authorities; and

3. Water companies, either providing sewage or water services to users in the area of the proposed operations or having water sources or collection, treatment, or distribution facilities located in these areas; ~~[-, but not limited to, planning agencies and sewage and water treatment authorities and water companies, either providing sewage or water services to users in the area of the proposed operations or having water sources or collection, treatment, or distribution facilities located in these areas;]~~ and

(b) All federal and Kentucky governmental agencies ~~that~~which have the authority to issue permits and licenses applicable to the proposed surface coal mining and reclamation operation and ~~that~~which are a part of the permit coordination process required by Section 3 of this administrative regulation; and

(c) Those agencies with an interest in the particular proposed operation including~~[-, but not limited to:]~~

1. The USDA Soil Conservation Service State Conservationist;

2. The local U.S. Army Corps of Engineers district engineer;

3. The National Park Service;

4. Kentucky and federal fish and wildlife agencies; and

5. The state historic preservation officer.

(8) In accordance with Section 12 of this administrative regulation, the cabinet shall, upon receipt of the application:

~~(a) [-]~~ Make the application available for public inspection and copying during all normal working hours at the appropriate regional office of the cabinet where the mining has been proposed; and~~[-, and shall]~~

~~(b)~~ Provide reasonable assistance to the public in the inspection and copying of the application.

Section 9. Submission of Comments or Objections by Public Agencies. (1) Written comments or objections on applications for permits, major revisions, amendments, and renewals of permits may be submitted to the cabinet by the public agencies to whom notification has been provided under Section 8(6) and (7) of this administrative regulation with respect to the effects of the proposed mining operations on the environment within their area of responsibility.

(2) These comments or objections shall be submitted to the cabinet ~~[in the manner prescribed by the cabinet, and shall be submitted]~~ within thirty (30) calendar days after the date of the written notification by the cabinet pursuant to Section 8(6) and (7) of this administrative regulation.

(3) The cabinet shall immediately file a copy of all comments or objections at the appropriate regional office of the cabinet for public inspection under Section 8(8) of this administrative regulation. A copy shall also be transmitted to the applicant.

Section 10. Right to File Written Objections. (1) Any person whose interests are or may be adversely affected or an officer or head of any federal, state, or local government agency or authority to be notified under Section 8 of this administrative regulation shall have the right to file written objections to an application for a permit, major revision, amendment, or renewal of a permit with the cabinet, within thirty (30) days after the last publication of the newspaper notice required by Section 8(1) of this administrative regulation.

(2) The cabinet shall, immediately upon receipt of any written objections:

(a) Transmit a copy of the objections to the applicant; and

(b) File a copy at the appropriate regional office of the cabinet for public inspection under Section 8(8) of this administrative regulation.

Section 11. Permit Conferences. (1) Procedure for requests. Any person whose interests are or may be adversely affected by the decision on the application, or the officer or head of any federal, state, or local government agency or authority to be notified under Section 8 of this administrative regulation may, in writing, request that the cabinet hold an informal conference on any application for a permit, major revision, amendment, or renewal of a permit. The request shall:

(a) Briefly summarize the issues to be raised by the person requesting ~~[requester]~~ at the conference;

(b) State ~~if~~whether the person requesting ~~[requester]~~ desires to have the conference conducted in the locality of the proposed mining operations; and

(c) Be filed with the cabinet not later than thirty (30) days after the last publication of the newspaper advertisement placed by the applicant under Section 8(1) of this administrative regulation.

~~(2) [Except as provided in subsection (3) of this section,]~~ If a permit conference has been requested in accordance with subsection (1) of this section, then the cabinet shall hold a conference within twenty (20) working days after the last date to request a conference under subsection (1)(c) of this section.

~~(3)~~ The conference shall be conducted according to the following:

(a) If requested under subsection (1)(b) of this section, the conference shall be held in the locality of the proposed mining.

(b) The date, time, and location of the conference shall be sent to the applicant and parties requesting the conference and advertised once by the cabinet in the newspaper of largest bona fide circulation, pursuant to ~~[according to the definition in]~~ KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located, at least two (2) weeks prior to the scheduled conference.

(c) If requested, in writing, by a person requesting the conference ~~[requester]~~ in a reasonable time prior to the conference, the cabinet may arrange with the applicant to grant parties to the conference access to the permit area and, to the extent that the applicant has the right to grant access, to the adjacent areas prior to the established date of the conference for the purpose of gathering information relevant to the conference.

(d) The requirements of 405 KAR 7:091 and ~~[405 KAR]~~ 7:092 shall not apply to the conduct of the conference.

1. The conference shall be conducted by a representative of the cabinet, who may accept oral or written statements and any other relevant information from any party to the conference.

2. An electronic or stenographic record shall be made of the conference proceedings, unless waived by all the parties.

3. The record shall be maintained and ~~[shall be]~~ accessible to the parties of the conference until final release of the applicant's performance bond or other equivalent guarantee pursuant to 405 KAR Chapter 10.

~~(4) [(3)]~~ If all parties requesting the conference stipulate agreement before the requested conference and withdraw their requests, the conference ~~shall~~need not be held.

~~(5) [(4)]~~ Permit conferences held in accordance with this section may be used by the cabinet as the public hearing required under 405 KAR 24:040, Section 2(6) on proposed relocation and closure of public roads.

Section 12. Public Availability of Information in Permit Applications on File with the Cabinet. (1) General availability.

(a) The cabinet shall make an application for a permit, revision, amendment, or renewal of a permit or an application for transfer, assignment, or sale of permit rights available for the public to inspect and copy by placing a full copy of the application at the regional office for the area in which mining shall occur. The application will be made available by the cabinet for public inspection and copying, at reasonable times, in accordance with Kentucky open records statutes, KRS 61.870 to 61.884. This copy need not include confidential information exempt from disclosure under sub-

~~section~~~~subsections (2) and~~ (3) of this section.

(b) The application required by paragraph (a) of this subsection shall be placed at the appropriate regional office no later than the first date of newspaper advertisement of the application.

(c) The applicant shall be responsible for placing all changes in the copy of the application retained at the regional office upon the changes being~~[when the changes are]~~ submitted to the Division of Mine Permits.

(2) Information pertaining to coal seams, test borings, core samples, and~~or~~ soil samples in applications shall be made available for inspection and copying to any person with an interest that~~[which]~~ is or may be adversely affected.

(3) Confidentiality.

(a) The cabinet shall provide for procedures to ensure the confidentiality of qualified confidential information.

(b) Confidential information shall be clearly identified by the applicant and submitted separately from the remainder of the application.

(c) If a dispute arises concerning the disclosure or nondisclosure of confidential information, the cabinet shall provide notice and convene a hearing in accordance with 405 KAR 7:092, Section 9.

(d) Confidential information shall be limited to the following:

~~1. (a)~~ Information that pertains only to the analysis of the chemical and physical properties of the coal to be mined, except information on components of the coal that~~[which]~~ are potentially toxic in the environment; and

~~2. (b)~~ Information on the nature and location of archaeological resources on public land and Indian land as required under the Archaeological Resources Protection Act of 1979, 16 U.S.C. 470aa - mm.

Section 13. Department Review of Applications for Permits, Revisions, Amendments, and Renewals. (1) General.

(a) The cabinet shall review the application for a permit, revision, amendment, or renewal; written comments and objections submitted; and records of any permit conference held on the application and make a written decision, within the time frames listed in Section 16(1) of this administrative regulation, concerning approval of, requiring modification of, or concerning rejection of the application.

(b) An applicant for a permit, revision, or amendment shall have the burden of establishing that the application is in compliance with all requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(2)(a) Administrative completeness determination.

1. Within ten (10) working days of initial receipt of the application the cabinet shall provide written notification to the applicant as to the administrative completeness of the application.

2. If the application is determined to be incomplete, the cabinet shall notify the applicant within ten (10) working days after initial receipt of the application by certified mail, return receipt requested, or by registered mail, of the deficiencies that~~[which]~~ render the application incomplete.

3. The applicant shall~~[may]~~ submit supplemental information to correct the identified deficiencies for a period of ten (10) working days after the applicant's receipt of the initial notice of incompleteness.

4. If, after ten (10) working days, the cabinet determines that the application is still incomplete, the cabinet shall return the incomplete application to the applicant with written notification of the reasons for the determination.

(b) ~~[A determination by the cabinet that the application is administratively complete means that the application contains the major elements required by KRS Chapter 350 and 405 KAR Chapters 7 through 24 which are necessary to allow meaningful review of the application by the cabinet.]~~ An application shall not be deemed administratively complete if one (1) or more major elements are found to be absent from the application, which, by virtue of their absence, would require that the permit be denied. A determination that an application is administratively complete shall not mean that the application is complete in every detail, nor shall it mean that any aspect of the application is technically sufficient or approvable.

(3) Processing of the administratively complete application.

Within the time periods set forth in Section 16 of this administrative regulation, the cabinet shall either:

(a) Notify the applicant of the cabinet's decision to issue or deny the application; or

(b) Notify the applicant in writing, by certified mail, return receipt requested, or by registered mail, promptly upon discovery of deficiencies in the application and allow the application to be temporarily withdrawn for the purpose of correcting the deficiencies. Temporary withdrawal periods shall not be counted against the time available to the cabinet for consideration of the application.

(4) Review of violations.

(a) The cabinet shall not issue a permit if any surface coal mining reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant is currently in violation of SMCRA, 30 U.S.C. 1201 - 1328 and 30 C.F.R. 700 - 955, [federal regulations enacted pursuant to SMCRA,] KRS Chapter 350 and 405 KAR Chapters 7 - 24 [administrative regulations adopted pursuant thereto], any other state's laws or administrative regulations under SMCRA, or any other law, rule, or administrative regulation referred to in this subsection. The denial of the permit shall be based on available information concerning:

1. Failure-to-abate cessation orders issued by OSM, Kentucky, or any other state;

2. Unabated imminent harm cessation orders issued by OSM, Kentucky, or any other state;

3. Delinquent civil penalties assessed pursuant to SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and 405 KAR Chapters 7 - 24 [administrative regulations adopted pursuant thereto], or any other state's laws or administrative regulations under SMCRA;

4. Bond forfeitures by OSM, Kentucky, or any other state where violations upon which the forfeitures were based have not been corrected;

5. Delinquent abandoned mine reclamation fees; and

6. Unabated violations of federal, Kentucky, and any other state's laws, rules and administrative regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining operation. [Based on available information concerning failure to abate cessation orders issued by OSM, Kentucky, or any other state; unabated imminent harm cessation orders issued by OSM, Kentucky, or any other state; delinquent civil penalties assessed pursuant to SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and administrative regulations adopted pursuant thereto, or any other state's laws or administrative regulations under SMCRA; bond forfeitures by OSM, Kentucky, or any other state where violations upon which the forfeitures were based have not been corrected; delinquent abandoned mine reclamation fees; and unabated violations of federal, Kentucky, and any other state's laws, rules and administrative regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, the cabinet shall not issue the permit if any surface coal mining reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant is currently in violation of SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and administrative regulations adopted pursuant thereto, any other state's laws or administrative regulations under SMCRA, or any other law, rule, or administrative regulation referred to in this subsection.]

(b) In the absence of a failure-to-abate cessation order, the cabinet may presume that a notice of violation issued by OSM, Kentucky, or any other state pursuant to its laws and regulations under SMCRA has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation, except if~~[when]~~ evidence to the contrary is set forth in the permit application, or if~~[when]~~ the violation is for nonpayment of abandoned mine reclamation fees or civil penalties.

(c) If a current violation exists, the cabinet shall require the applicant or person who owns or controls the applicant, before issuance of the permit, to either:

1. Submit to the cabinet proof that the current violation has been or is in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation; or

2. Establish for the cabinet that the applicant, or any person owned or controlled by either the applicant or any person who owns or controls the applicant, has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the current violation. If the initial judicial review authority affirms the violation, then the applicant shall within thirty (30) days of the judicial action submit proof required under subparagraph 1 of this paragraph.

(d) ~~(b)~~ Any permit that is issued on the basis of proof submitted under paragraph (a)1 of this subsection that a violation is in the process of being corrected, or pending the outcome of an appeal described in paragraph (a)2 of this subsection, shall be conditionally issued.

(e) ~~(c)~~ If the cabinet makes a finding that the applicant, anyone who owns or controls the applicant, or the operator specified in the application, controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of KRS Chapter 350 and **405 KAR Chapters 7 - 24 of** ~~a[administrative regulations adopted pursuant thereto of such]~~ nature and duration, and with resulting irreparable damage to the environment as to indicate an intent not to comply with those laws or administrative regulations, **a permit shall not be issued. Before** ~~no permit shall be issued. Before such~~ a finding becomes final, the applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for in 405 KAR 7:092, Section 8.

(5) Final compliance review. After an application is approved, but before the permit is issued, the cabinet shall reconsider its decision to approve the application, based on the compliance review required by subsection (4)(a) of this section in light of any new information submitted under 405 KAR 8:030, Sections 2(11) and 3(4), or 405 KAR 8:040, Sections 2(11) and 3(4).

Section 14. Criteria for Application Approval or Denial. No application for a permit, revision (as applicable), or amendment of a permit shall be approved unless the application affirmatively demonstrates and the cabinet finds, in writing, on the basis of information set forth in the application or from information otherwise available, which has been documented in the approval, that:

(1) The permit application is complete and accurate and in compliance with all requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24;[-]

(2) The applicant has demonstrated that surface coal mining and reclamation operations, as required by KRS Chapter 350 and 405 KAR Chapters 7 through 24 can be feasibly accomplished under the mining and reclamation plan contained in the application;[-]

(3) The assessment of the probable cumulative impacts of all anticipated coal mining in the cumulative impact area on the hydrologic balance has been made by the cabinet and the operations proposed under the application have been designed to prevent material damage to the hydrologic balance outside the proposed permit area;[-]

(4) The proposed permit area is:

(a) Not included within an area designated unsuitable for surface coal mining operations under 405 KAR 24:030;

(b) Not within an area under study for designation as unsuitable for surface coal mining operations in an administrative proceeding begun under 405 KAR 24:030, unless the applicant demonstrates that, before January 4, 1977, he or she made substantial legal and financial commitments in relation to the operation for which he or she is applying for a permit;

(c) Not on any lands subject to the prohibitions or limitations of 405 KAR 24:040, Section 2(1), (2) or (3);

(d) Not within 100 feet of the outside right-of-way line of any public road, except as provided for in 405 KAR 24:040, Section 2(6); and

(e) Not within 300 feet from any occupied dwelling, except as provided for in 405 KAR 24:040, Section 2(5);[-]

(5)(a) The proposed operations will not adversely affect any publicly-owned parks or any places included on the National Register of Historic Places, except as provided for in 405 KAR 24:040, Section 2(4); and

(b) The cabinet has taken into account the effect of the pro-

posed operations on properties listed and eligible for listing on the National Register of Historic Places. This finding may be supported in part by inclusion of appropriate permit conditions or changes in the mining and reclamation plan to protect historic resources, or a documented decision that the cabinet has determined that no additional protection measures are necessary;[-]

(6) For operations involving the surface mining of coal where the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the cabinet the documentation required under 405 KAR 8:030, Section 4(2) or 405 KAR 8:040, Section 4(2);[-]

(7) With regard to current violations, the applicant has either:

(a) Submitted the proof required by Section 13(4)(a) of this administrative regulation; or

(b) Made the demonstration required by Section 13(4)(b) of this administrative regulation;[-]

(8) The applicant has paid all reclamation fees from previous and existing operations as required by 30 C.F.R. 870, or has entered into a payment schedule approved by OSM. If the applicant has entered into a payment schedule approved by OSM, a permit may be issued only if it includes a condition that the permittee comply with the approved payment schedule;[-]

(9) The applicant or the operator, if other than the applicant, does not control and has not controlled mining operations with a demonstrated pattern of willful violations of SMCRA or KRS Chapter 350 of such a nature and duration and with such resulting irreparable damage to the environment as to indicate an intent not to comply with SMCRA or KRS Chapter 350;[-]

(10) The applicant has demonstrated that any existing structure will comply with 405 KAR 8:030, Section 25 and 405 KAR 8:040, Section 25, and the applicable performance standards of 405 KAR Chapters 16 and 18;[-]

(11) The applicant has, if applicable, satisfied the requirements for approval of a long-term, intensive agricultural postmining land use;[-]

(12) The applicant can reasonably be expected to submit the performance bond or other equivalent guarantee required under 405 KAR Chapter 10 prior to the issuance of the permit;[-]

(13) The applicant has, with respect to prime farmland obtained either a negative determination or satisfied the requirements of 405 KAR 8:050, Section 3;[-]

(14) The applicant has satisfied the applicable requirements of 405 KAR 8:050 regarding special categories of mining;[-]

(15) The cabinet has made all specific approvals required under 405 KAR Chapters 16 through 20;[-]

(16) The cabinet has found that the activities would not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats as determined under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);[-]

(17) The applicant has not forfeited any bond under KRS Chapter 350. When the applicant has forfeited a bond, the permit may be issued if the land for which the bond was forfeited has been satisfactorily reclaimed without cost to the state or the operator or person has paid a sum that the cabinet finds is adequate to reclaim the land;[-]

(18) The applicant has not had a permit revoked, suspended or terminated under KRS Chapter 350. If the applicant has had a permit revoked, suspended or terminated, another permit may be issued, or a suspended permit may be reinstated, only if the applicant has complied with all of the requirements of KRS Chapter 350 or submitted proof satisfactory to the cabinet that the violation has been corrected or is in the process of being corrected, in respect to all permits issued to him or her;[-]

(19) The operation will not constitute a hazard to or do physical damage to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public property;[-]

(20) The surface coal mining operation will not adversely affect a wild river established pursuant to KRS Chapter 146 or a state park unless adequate screening and other measures as approved by the cabinet have been incorporated into the permit application and the surface coal mining operation has been jointly approved by all affected agencies as set forth under 405 KAR 24:040; or[-]

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(21) For a proposed remining operation where the applicant intends to reclaim in accordance with the requirements of 405 KAR 16:190, Section 7, or 405 KAR 18:190, Section 5, the applicant has demonstrated, to the satisfaction of the cabinet, that the site of the operation will be a previously mined area as defined in those sections.

Section 15. Criteria for Application Approval or Denial Regarding Existing Structures. ~~An[Ne]~~ application for a permit, revision, or amendment ~~that[which]~~ proposes to use an existing structure in connection with or to facilitate the proposed surface coal mining and reclamation operation shall not be approved, unless the applicant demonstrates and the cabinet finds, in writing, on the basis of information set forth in the complete and accurate application, that the provisions of 405 KAR 7:040, Section 4, have been met.

Section 16. Application Approval or Denial Actions. (1) The cabinet shall take action on applications within the following time periods as appropriate:

(a)1. Except as provided for in paragraph (b) of this subsection, for a complete and accurate application submitted under Section 2(2)(a), (b), (d), and (e) of this administrative regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application within sixty-five (65) working days after the notice of administrative completeness under Section 13(2) of this administrative regulation. ~~[except that]~~ Periods of temporary withdrawal under Section 13(3)(b) of this administrative regulation shall not be counted against the sixty-five (65) working-day period available to the cabinet.

2. Except as provided in paragraph (b) of this subsection, for a complete and accurate application submitted under Section 2(2)(c) of this administrative regulation of a major revision as provided in Section 20 of this administrative regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application within forty-five (45) working days after the notice of administrative completeness under Section 13(2) of this administrative regulation. ~~[except that]~~ Periods of temporary withdrawal under Section 13(3)(b) of this administrative regulation shall not be counted against the forty-five (45) working-day period available to the cabinet.

3. For a complete and accurate application submitted under Section 2(2)(c) of this administrative regulation for a minor revision as provided in Section 20 of this administrative regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application within fifteen (15) working days after the notice of administrative completeness under Section 13(2) of this administrative regulation. ~~[except that]~~ Periods of temporary withdrawal under Section 13(3)(b) of this administrative regulation shall not be counted against the fifteen (15) working-day period available to the cabinet.

(b) If the notice, hearing, and conference procedures mandated by KRS Chapter 350 and KAR Title 405 ~~[KAR]~~ prevent a decision from being made within the time periods specified in paragraph (a) of this subsection, the cabinet shall have additional time to issue its decision, but not to exceed twenty (20) days from the completion of the notice, hearing, and conference procedures.

(2) The cabinet shall issue written notification of the decision to approve, modify, or deny the application, in whole or part, to the following persons and entities:

(a) The applicant;

(b) Each person who files comments or objections to the permit application;

(c) Each party to an informal permit conference, if held;

(d) The county judge-executive of the county~~[:]~~ and the chief executive officer of any municipality~~[:]~~ in which the permit area lies. This notice shall be sent within ten (10) days after the issuance of the permit and shall include a description of the location of the permit area; and

(e) The field office director of the Division of Mine ~~[Office of Surface Mining]~~ Reclamation and Enforcement.

(3) If the application has been denied, the notification required in subsection (2) of this section, for the applicant, any person filing objections to the permit and parties to an informal conference, shall include specific reasons for the denial.

(4) If the cabinet decides to approve the application, it shall require that the applicant file the performance bond before the permit is issued, in accordance with 405 KAR Chapter 10.

(5) The cabinet shall publish a summary of its decision in the newspaper of largest bona fide circulation, according to ~~[the definition in]~~ KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located.

Section 17. Term of Permit. (1) Each permit shall be issued for a fixed term not to exceed five (5) years. A longer fixed permit term may be granted at the discretion of the cabinet, pursuant to KRS 350.060(1)(a), only if:

(a) The application is complete and accurate for the specified longer term; and

(b) The applicant shows that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and for the opening of the operation with the need confirmed, in writing, by the applicant's proposed source for the financing.

(2)(a) A permit shall terminate, if the permittee has not begun the surface coal mining and reclamation operation covered by the permit within three (3) years of the issuance of the permit.

(b) The cabinet may grant reasonable extensions pursuant to KRS 350.060(16) of the time for commencement of these operations, upon receipt of a written statement showing that the extensions of time are necessary, if:

1. Litigation precludes the commencement or threatens substantial economic loss to the permittee; or

2. There are conditions beyond the control and without the fault or negligence of the permittee.

(c) With respect to coal to be mined for use in a synthetic fuel facility or specified major electric generating facility, the permittee shall be deemed to have commenced surface mining operations ~~if[when]~~ construction of the synthetic fuel or generating facility is initiated.

(d) Extensions of time granted by the cabinet under this subsection shall be specifically set forth in the permit, and notice of the extension shall be made to the public.

(3) Permits may be suspended, revoked, or modified by the cabinet, in accordance with Section 19 of this administrative regulation; 405 KAR 7:060, Section 3; 405 KAR 8:050, Sections 4, 6, and 7 ~~[Section 3 of 405 KAR 7:060; Sections 4, 6, and 7 of 405 KAR 8:050]~~; and 405 KAR Chapter 12.

Section 18. Conditions of Permits. Actions by an applicant, permittee, or operator to submit an application to the cabinet, to accept a permit issued by the cabinet, or to begin operations pursuant to a permit issued by the cabinet, shall be deemed to constitute knowledge and acceptance of the conditions set forth in this section, which shall be applicable to each permit issued by the cabinet pursuant to this chapter if the conditions have or have not ~~[whether or not the conditions have]~~ been set forth in the permit.

(1) General. The following general conditions shall apply to a permit[apply to permits] issued by the cabinet:

(a) The permittee shall comply fully with all terms and conditions of the permit and all applicable performance standards of KRS Chapter 350 and 405 KAR Chapters 7 through 24; ~~[and]~~

(b) ~~[Except to the extent that the cabinet otherwise directs in the permit that specific actions be taken,]~~ The permittee shall conduct all surface coal mining and reclamation operations as described in the approved application, except to the extent that the cabinet otherwise directs in the permit that specific actions be taken; and

(c) The permittee shall conduct surface coal mining and reclamation operations only on those lands specifically designated as the permit area on the maps submitted under 405 KAR 8:030 or 405 KAR 8:040 and authorized for the term of the permit, and that[; and which] are subject to the performance bond in effect pursuant to 405 KAR Chapter 10.

(2) Right of entry.

(a) Without advance notice, unreasonable delay, or a search warrant, and upon presentation of appropriate credentials, the permittee shall allow authorized representatives of the Secretary of

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the Interior and the cabinet to:

1. Have the rights of entry provided for in 405 KAR 12:010, Section 3; and

2. Be accompanied by private persons for the purpose of conducting a federal inspection ~~if/when~~ the inspection is in response to an alleged violation reported to the cabinet by the private person.

(b) The permittee shall allow the authorized representatives of the cabinet to be accompanied by private persons for the purpose of conducting an inspection pursuant to 405 KAR 12:030.

(3) Environment, public health, and safety.

(a) The permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from failure to comply with any term or condition of the permit, including ~~but not limited to~~:

1. ~~Any~~ Accelerated or additional monitoring necessary to determine the nature and extent of failure to comply and the results of the failure to comply;

2. Immediate implementation of measures necessary to comply; and

3. Warning, as soon as possible after learning of the failure to comply, any person whose health and safety is in imminent danger due to the failure to comply.

(b) The permittee shall dispose of solids, sludge, filter backwash, or pollutants removed in the course of treatment or control of waters or emissions to the air in the manner required by 405 KAR Chapters 16 through 20, and ~~that/which~~ prevents violation of any other applicable Kentucky or federal law.

(c) The permittee shall conduct its operations:

1. In accordance with any measures specified in the permit as necessary to prevent significant, imminent environmental harm that may affect ~~to~~ the health or safety of the public; and

2. Utilizing any methods specified in the permit by the cabinet in approving alternative methods of compliance with the performance standards of KRS Chapter 350 and 405 KAR Chapters 16 through 20, in accordance with KRS Chapter 350 and 405 KAR Chapters 16 through 20.

(4) Reclamation fees. The permittee shall pay all reclamation fees required by 30 C.F.R. 870 for coal produced under the permit for sale, transfer, or use, in the manner required by that subchapter.

(5) Within thirty (30) days after a cessation order is issued by OSM for operations conducted under the permit or after an order for cessation and immediate compliance is issued under 405 KAR 12:020, Section 3, for operations conducted under the permit, except ~~if/when~~ a stay of the order is granted and remains in effect, the permittee shall either ~~submit to the cabinet the following information, current to the date the order was issued, or~~ notify the cabinet in writing that there has been no change since the immediately preceding submittal of the information or submit to the cabinet the following information, current to the date the order was issued:

(a) Any new information needed to correct or update the information previously submitted to the cabinet by the permittee under 405 KAR 8:030, Section 2(3), or 405 KAR 8:040, Section 2(3); or

(b) If not previously submitted, the information required from a permit applicant by 405 KAR 8:030, Section 2(3), or 405 KAR 8:040, Section 2(3).

Section 19. Review of Permits. (1)(a) The cabinet shall review each permit issued under this chapter during the term of the permit.

1. This review shall occur not later than the middle of the permit term and as required by 405 KAR 7:060 and 405 KAR 8:050, Sections 4, 6, and 7.

2. Issued permits shall be reevaluated in accordance with the terms of the permit and the requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24, including reevaluation of the bond.

(b) For permits of longer than five (5) year terms, a review of the permit shall be no less frequent than the permit midterm or every five (5) years, whichever is more frequent.

(2) After the review required by subsection (1) of this section, or at any time, the cabinet may, by order, require revision or modification of the permit provisions to ensure compliance with KRS

Chapter 350 and 405 KAR Chapters 7 through 24.

(3) Copies of the decision of the cabinet shall be sent to the permittee.

(4) Any order of the cabinet requiring revision or modification of permits shall be based upon written findings and shall be subject to the provisions for administrative and judicial review of 405 KAR 7:092, Section 8.

Section 20. Permit Revisions. (1) General. A revision to a permit shall be obtained:

(a) For changes in the surface coal mining and reclamation operations described in the existing application and approved under the current permit;

(b) If a revision is required by an order issued under Section 19~~(4)~~ of this administrative regulation;

(c) In order to continue operation after the cancellation or material reduction of the liability insurance policy, performance bond, or other equivalent guarantee upon which the original permit was issued; or

(d) As otherwise required under 405 KAR Chapters 7 through 24.

(2) Major revisions.

(a) Except as provided in subsections (3)(f) and (6) of this section, a revision shall be deemed a major revision if ~~the cabinet determines that~~ the proposed change is of such scope and nature that public notice is necessary to allow participation in the cabinet's decision by persons who have an interest ~~that/which~~ may be adversely affected by the proposed change. Major revisions shall include ~~but shall not be limited to~~:

1. A change~~Changes~~ in the postmining land use;

2. Enlargement or relocation of impoundments so as to increase the safety hazard classification of the impoundment;

3. A variance~~Variances~~ to approximate original contour requirements;

4. Construction or relocation of a road, if/roads, where the construction or relocation could adversely affect the interests of persons other than the surface owner;

5. A change that~~Changes which~~ may adversely affect significant fish and wildlife habitats or endangered species;

6. A proposed experimental practice~~Proposed experimental practices~~;

7. A change that may cause a major impact on the hydrologic balance;

8. An incidental boundary revision that affects a new watershed; and

9. An incidental boundary revision that includes a diversion of a perennial stream~~Changes which may cause major impacts on the hydrologic balance~~;

~~8. Incidental boundary revisions that affect new watersheds; and~~

~~9. Incidental boundary revisions that include diversions of perennial streams~~;

(b) A major revision~~Major revisions~~ shall be subject to all of the requirements of Sections 5; 7 through 12; 13(1), (2), (3); 14(1) through (6), (8), (10) through (16), (19) through (21); 15; 16; 18; and 24 of this administrative regulation; and shall be submitted on forms prescribed by the cabinet pursuant to KRS Chapter 350 and 405 KAR Chapters 7 - 24. In addition to the requirements of Section 8(5) of this administrative regulation, the advertisement shall contain a statement that the applicant proposes to revise the existing permit and shall contain a description of the proposed change.

(3) Minor revisions.

(a) A revision that is~~All revisions which are~~ not determined by the cabinet under subsection (2) of this section to be a major revision, or that is not an operator change revision~~major revisions, or which are not operator change revisions~~ under subsection (6) of this section, shall be a minor revision and~~deemed minor revisions. Minor revisions~~ shall be subject to Sections 5; 7; 12; 13(1), (2), (3); 14(1) through (6), (10) through (16), (19) through (21); 15; 16(1) through (4); 18; and 24 of this administrative regulation, except that a minor field revision~~minor field revisions~~ described in paragraph (d) of this subsection shall not be subject to the administrative completeness determination of Section 13(2) of

this administrative regulation, and the time frame for review in Section 16(1)(a)3 of this administrative regulation shall begin at the time of application submittal. ~~Minor revisions shall be submitted on MPA 04, Application to Revise a Mining Plan~~ [forms prescribed by the cabinet].

(b) If the cabinet determines that a proposed minor revision is actually a major revision during the administrative completeness determination under Section 13 of this administrative regulation, the cabinet shall so inform the applicant and return the application.

(c) The cabinet shall notify, in writing, those persons ~~if any,~~ that the cabinet determines could have an interest ~~or that~~ may be adversely affected by the proposed change. Those persons shall have the right to file written objections to the revision within ten (10) days of the date of the notification.

(d) **A minor field revision** ~~The following minor revisions shall be deemed~~ [Minor field revisions] shall [which may] be reviewed and processed in accordance with this section by the appropriate regional office of the department. The following shall be a minor field revision ~~revisions~~, unless ~~However, if~~ the number of persons that potentially could have an interest ~~or that~~ may be adversely affected by the proposed change is large enough that public notice by newspaper advertisement rather than individual notice by letter from the cabinet is necessary, the regional administrator shall determine that the proposed revision is a major revision and it shall not be processed under this paragraph.

1. Proposals for minor relocation of underground mine entries if:

a. There are no structures or renewable resource lands (under paragraph (b) of the definition in 405 KAR 8:001(103) of "renewable resource lands") overlying the area;

b. There is no proposed change to the permit boundary; and

c. The proposed new location is on the same face-up area and coal seam as originally permitted, is within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond.;

2. **A proposal for retention of a concrete platform or a small building** ~~Proposals for retention of concrete platforms and small buildings~~ if:

a. There is no proposed change to the previously approved postmining land use; and

b. The application contains a notarized letter from the surface owner requesting retention of the structure.;

3. **A proposal to leave** ~~Proposals to leave the following~~ roads as permanent, except proposals involving roads to impoundments, excess spoil fills, coal mine waste fills, or air shafts; roads within 100 feet of an intermittent or perennial stream; and roads within areas designated unsuitable for mining pursuant to 405 KAR 24:040, Section 2, regardless of if a previous waiver or approval has been granted. The application shall contain a notarized letter from the surface owner including a request to retain the road and a statement acknowledging that the surface owner understands that the operator does not have responsibility for maintenance of the road after the performance bond has been released pursuant to 405 KAR 10:040 for the area in which the road is located.;

~~a. Excess spoil fill roads;~~

~~b. Coal mine waste roads;~~

~~c. Roads to air shafts;~~

~~d. Roads within 100 feet of an intermittent stream or perennial stream; and~~

~~e. Roads within areas designated unsuitable for mining under 405 KAR 24:040, Section 2, regardless of whether a previous waiver or approval has been granted.~~

~~f. Roads to impoundments shall not be considered minor field revisions.~~

~~g. The application shall contain a notarized letter from the surface owner including a request to retain the road and a statement acknowledging that the surface owner understands that the operator has no responsibility for maintenance of the road after the performance bond has been released pursuant to 405 KAR 10:040 for the area in which the road is located.], except proposals involving roads to impoundments, excess spoil fills, coal mine waste fills, or air shafts; roads within 100 feet of an intermittent or perennial~~

~~stream; and roads within areas designated unsuitable for mining under 405 KAR 24:040, Section 2, regardless of whether a previous waiver or approval has been granted. The application shall contain a notarized letter from the surface owner including a request to retain the road and a statement acknowledging that the surface owner understands that the operator has no responsibility for maintenance of the road after the performance bond has been released pursuant to 405 KAR 10:040 for the area in which the road is located.]~~

4. **A proposal to increase the diameter of a culvert used as a road crossdrain, not including a culvert used for a stream crossing, if the proposed culvert is the same type of pipe as the previously approved culvert;**

5. **A proposal to install an additional culvert used as a road crossdrain (not including a culvert used for a stream crossing), if the diameter of the proposed additional culvert is equal to the diameter of the nearest downstream crossdrain and if it is the same type of pipe as the nearest downstream crossdrain;**

6. **A proposal for a minor relocation of an on-bench sediment control structure (dugouts only) in order to locate the structure at a low spot on the same bench on which** ~~Proposals to increase the diameter of culverts used as road crossdrains, not including culverts used for stream crossings, if the proposed culvert is the same type of pipe as the previously approved culvert.~~

5. ~~Proposals to install additional culverts used as road crossdrains (not including culverts used for stream crossings), if the diameter of the proposed additional culvert is equal to the diameter of the nearest downstream crossdrain and if it is the same type of pipe as the nearest downstream crossdrain.~~

6. ~~Proposals for minor relocation of on-bench sediment control structures (dugouts only) in order to locate the structures at low spots on the same bench on which they were] initially proposed, if:~~

a. The drainage area to the structure shall ~~will~~ remain the same as the original design;

b. The proposed location shall ~~will~~ not cause short-circuiting of the structure; and

c. There is no proposed change to the permit boundary.;

7. **A proposal** ~~Proposals~~ to retain diversions of overland flow (not including stream diversions) as permanent facilities if:

a. The application contains a notarized letter from the surface owner including a request to retain the diversion and a statement accepting maintenance responsibilities for the diversion ~~diversions~~; and

b. The diversions have previously been designed to the standards for permanent diversions.;

8. **A proposal** ~~Proposals~~ for relocation of topsoil storage areas if:

a. There is no proposed change to the permit boundary; and

b. The proposed new location was previously permitted as a disturbed area within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond.;

9. **A proposal to substitute a** ~~Proposals to substitute~~ plant species if:

a. The proposed species is of the same vegetative type (grass, legume, tree, or shrub) as the original species;

b. The proposed species will serve the equivalent function of the original species with respect to the previously approved: revegetation plan, postmining land use plan, and the fish and wildlife protection and enhancement plan; and

c. The proposed species and its application or planting rate are compatible with the remainder of the previously approved species mixture to be planted.;

10. **A proposal** ~~Proposals~~ to utilize hydroseeding for trees instead of planting trees or tree seedlings if:

a. Hydroseeding is an appropriate method for the tree species being established; and

b. No change in tree species is involved unless concurrently approved under subparagraph 9 of this paragraph.;

11. **A proposal** ~~Proposals~~ to change the type of mulch to be utilized on the permit area, including a revised rate of application consistent with the different type of mulch proposed.;

12. A proposal~~[Proposals]~~ to retain small depressions in the reclaimed area;[-]

13. A proposal~~[Proposals]~~ required by the cabinet to increase frequency of air blast monitoring;[-]

14. A proposal~~[Proposals]~~ required by the cabinet to increase frequency of air pollution monitoring;[-]

15. A proposal~~[Proposals]~~ to employ more effective fugitive dust controls, and proposals required by the cabinet to employ additional fugitive dust controls;[-]

16. A proposal~~[Proposals]~~ to add a portable coal crusher if:

a. The crusher and associated conveying equipment are a completely portable, trailer mounted unit;

b. The equipment shall~~[will]~~ be utilized to crush coal only from the permit area on which it is proposed to be located;

c. The operation shall~~[will]~~ not generate coal mine waste;

d. There is no proposed change to the permit boundary; and

e. The equipment shall~~[will]~~ always be located in the mining pit or other location previously permitted as a disturbed area controlled by a previously approved sedimentation pond and there shall~~[will]~~ be no additional disturbed acreage or delayed reclamation within the drainage area of any of the sedimentation ponds;[-]

17. A proposal~~[Proposals]~~ to change the time periods, or the types or patterns of warning or all-clear signals, when explosives are to be detonated;[-]

18. A proposal~~[Proposals]~~ to relocate an explosive storage area within the existing permit area in accordance with 27 C.F.R. 555.206, 555.218, 555.219, and 555.220~~[55.206, 55.218, 55.219, 55.220]~~, and 30 C.F.R. 77.1301(c);[-]

19. Approval for minor relocation of a support facility such as a conveyor, hopper, and a coal stockpile~~[support facilities such as conveyors, hoppers, and coal stockpiles]~~ if:

a. There is no proposed change to the permit boundary; and

b. The proposed new location was previously permitted as a disturbed area within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond.

20. A proposal for a modification of a shared facility~~[Proposals for modifications of shared facilities]~~ if that modification has already been approved in a revision for one (1) of the permittees by the Division of Mine Permits and no additional performance bond was required for the initial revision;[-]

21. A proposal~~[Proposals]~~ to add a hopper to a permitted area if:

a. There is no proposed change to the permit boundary; and

b. The proposed location was previously permitted as a disturbed area controlled by a previously approved sedimentation pond and there will be no additional disturbed acreage or delayed reclamation within the drainage area of that sedimentation pond;[-]

22. A proposal~~[Proposals]~~ to change the brush disposal plan, not including any proposals to bury brush in the backfill area on steep slopes or in excess spoil fills or coal mine waste fills;[-]

23. A proposal~~[Proposals]~~ to change the basis of judging revegetation from reference areas to the technical standards established in 405 KAR Chapters 7 - 24;[-]

24. a. A proposal for an incidental boundary revision for a minor off-permit disturbance if:

(i) The total acreage of the minor off-permit disturbance is no more than one (1) acre combined per proposal;

(ii) The cumulative acreage limitation in subsection (5) of this section is not exceeded;

(iii) The area to be permitted does not include any wetlands, prime farmlands, stream buffer zones, federal lands, habitats of unusually high value for fish or wildlife, an area that may contain threatened or endangered species, or an area designated as unsuitable for mining pursuant to 405 KAR Chapter 24;

(iv) The off-permit disturbance was not a coal extraction area nor shall any future coal extraction occur on the area;

(v) There is no structure such as an excess spoil disposal fill, a coal mine waste disposal fill or impoundment, or a water impoundment involved;

(vi) The surface owner of the area to be permitted is a surface owner of a disturbed area pursuant to the existing permit;

and

(vii) An additional performance bond in the amount of \$5,000 has been filed by the permittee.

b. The regional administrator may decline to review and process a proposal to permit an off-permit disturbance as a minor field revision and instead requires that an application be submitted to the Division of Mine Permits.~~[Proposals for incidental boundary revisions for minor off-permit disturbances if:~~

~~a. The total acreage of the minor off-permit disturbances is no more than one (1) acre combined per proposal;~~

~~b. The cumulative acreage limitation in subsection (5) of this section is not exceeded;~~

~~c. The area to be permitted does not include any wetlands, prime farmlands, stream buffer zones, federal lands, habitats of unusually high value for fish and wildlife, areas that may contain threatened or endangered species, or areas designated unsuitable for mining under 405 KAR Chapter 24;~~

~~d. The off-permit disturbance was not a coal extraction area nor shall any future coal extraction occur on the area;~~

~~e. There are no structures such as excess spoil disposal fills, coal mine waste disposal fills or impoundments, or water impoundments involved;~~

~~f. The surface owner of the area to be permitted is a surface owner of disturbed area under the existing permit; and~~

~~g. An additional performance bond in the amount of \$5000 has been filed by the permittee.~~

~~h. If deemed necessary for any reason, the regional administrator may decline to review and process any proposal to permit an off-permit disturbance as a minor field revision and instead require that an application be submitted to the Division of Mine Permits.]~~

25. Except as provided in clauses a. through e. of this subparagraph, a proposal to remove a sedimentation pond previously approved as a permanent impoundment~~[below, proposals to remove sedimentation ponds previously approved as permanent impoundments]~~ if the application contains a notarized letter from the surface owner requesting the elimination of the impoundment, the application contains an acceptable plan for removal, and the criteria for sedimentation pond removal have been met.

A proposal to remove a sedimentation pond shall not be processed as a minor field revision if the:

a. Structure~~[However, proposals to remove sedimentation ponds shall not be processed as minor field revisions if:~~

~~a. The structure] has a hazard classification of B or C;~~

~~b. [The] Impoundment is a developed water resource land use;~~

~~c. [The] Removal or activities associated with the removal of the structure may adversely affect significant fish and wildlife habitats or threatened or endangered species;~~

~~d. [The] Impoundment may be a necessary element in the achievement of the previously approved postmining land use (such as a stock pond for pastureland if [where] no other nearby source of water is available to the livestock); or~~

~~e. [The] Impoundment was originally planned to be left for the purpose, in whole or in part, of enhancing fish and wildlife and related environmental values;[-]~~

26. A proposal to approve an exemption~~[Proposals to approve exemptions]~~ from the requirement to pass drainage through a sedimentation pond for a disturbed area~~[sedimentation ponds for disturbed areas]~~ that, due to unexpected field conditions, will not drain to an approved sedimentation pond if:

a. There has not been any acid drainage or drainage containing concentrations of total iron or manganese from this or nearby areas of the mine that could result in water quality violations if untreated and none is expected based on overburden analysis;

b. The application contains a justification that it is not feasible to control the drainage by a sedimentation pond;

c. The disturbed area is one (1) acre or less;

d. The application contains a plan to immediately implement alternate sedimentation control measures including, at a minimum, mulching, silt fences, straw bale dikes, and establishment of a quick growing temporary vegetative cover;

e. The application contains sufficient plan views and cross sections certified by a registered professional engineer to clearly illustrate the feasibility of the proposal and the location of the alternate control methods (minimum scale one (1) inch equals 100

feet); and

f. The application contains a MRP map certified by a ~~[registered]~~ professional engineer showing the location of the disturbed area and the drainage area clearly; ~~and~~[-];

27. A proposal[Proposals] to use the Reclamation Advisory Memorandum #124 reclamation practice on sites where the permittee is required to establish trees and shrubs as part of the approved reclamation plan if there is a letter of consent from the property owner.

(e) Proposed minor revisions ~~that~~which only seek to change the engineering design of impoundments and diversions of overland flow ~~if~~where no change in permit boundary is involved shall not be subject to the administrative completeness determination of Section 13(2) of this administrative regulation.

1. Within ten (10) days the cabinet shall process the application and provide a written notice stating the application has been determined to be subject to this paragraph and is being forwarded to technical review.[-; however, the application shall be processed in, and written notice that the application has been determined to be subject to this paragraph and is being forwarded for technical review shall be provided to the applicant within ten (10) working days.]

2. The time frame for review in Section 16(1)(a)3 of this administrative regulation shall begin at the time of this notice.

(f) An incidental boundary revision shall be deemed a minor revision if it~~Incidental boundary revisions shall be deemed minor revisions if they:~~

1. ~~Does[De]~~ not exceed ten (10) percent of the relevant surface or underground acreage in the original or amended permit area;

2. ~~Is[Are]~~ contiguous to the current permit area;

3. ~~Is[Are]~~ within the same watershed as the current permit area;

4. ~~Is[Are]~~ required for an orderly continuation of the mining operation;

5. ~~Involves[Involve]~~ mining of the same coal seam or seams as in the current permit;

6. ~~Involves[Involve]~~ only lands for which the hydrologic and geologic data and the probable hydrologic consequences determination in the current permit are applicable;

7. ~~Does[De]~~ not involve a property[properties] on which mining is prohibited under KRS 350.085 and 405 KAR 24:040, unless a waiver has been obtained, or that has~~appropriate waivers have been obtained, or which have~~ been designated as unsuitable for mining under 405 KAR 24:030, or is a property~~any properties~~ eligible for listing on the National Register of Historic Places;

8. ~~Does[De]~~ not involve any of the categories of mining in 405 KAR 7:060 and 405 KAR 8:050 unless the current permit already includes the relevant category;

9. ~~Does[De]~~ not constitute a change in the current method of mining; and

10. ~~Shall[Will]~~ be reclaimed in conformity with the current reclamation plan.

(4) An extension~~Any extensions~~ to the area covered by a permit, except for incidental boundary revisions, shall be made by application for a new or amended permit and shall not be approved under this section.

(5) Size limitations for incidental boundary revisions.

(a) For surface mining activities, an incidental boundary revision shall not exceed ten (10) percent of the acreage in the original or amended permit area[-]; and shall not exceed twenty (20) acres.

(b) For underground mining activities and auger mining, an incidental boundary revision for a surface operation and an incidental boundary revision~~incidental boundary revisions for surface operations and incidental boundary revisions~~ for underground workings shall be determined separately.

1. For surface operations, an incidental boundary revision shall not exceed the greater of two (2) acres or ten (10) percent of the acreage of surface operations in the original or amended permit area[-]; and shall not exceed twenty (20) acres.

2. For underground workings, an incidental boundary revision shall not exceed ten (10) percent of the acreage of underground workings in the original or amended permit area[-]; and shall not exceed twenty (20) acres.

(c) Cumulative incidental acreage added by successive incidental boundary revisions shall not exceed the limitations in this subsection. Acreage added by incidental boundary revisions prior to a permit amendment shall not be counted toward cumulative incidental acreage after the amendment.

(6) Operator change revisions.

(a) This subsection shall apply to all operator changes that do not constitute a transfer, assignment, or sale of permit rights.

(b) A permittee proposing to change the operator approved in the permit shall submit a complete and accurate application for approval of the change. The application shall be on forms provided by the cabinet.

~~(c) The application shall include, but shall not be limited to, the information set forth in this paragraph:~~

1. The permit number, the name and business address of the permittee, the telephone number of the permittee, and the identifying number assigned to the permittee by the cabinet;

2. The name, business address, and telephone number of the operator approved in the permit, and the identifying number, if any, assigned to the approved operator by the cabinet;

3. For the proposed operator and persons related to the proposed operator through ownership or control, the same information as required for applicants and persons related to applicants through ownership or control by Sections 2(1) through (4) and (8) of 405 KAR 8:030 and 405 KAR 8:040, and Sections 2(11) through (13) of those administrative regulations shall also apply; and

4. For the proposed operator and persons related to the proposed operator through ownership or control, the same information as required for applicants and persons related to applicants through ownership or control by Sections 3(1) through (3) of 405 KAR 8:030 and ~~[405 KAR]~~ 8:040, except information under Section 3(3) pertaining to abated violations shall not be required, and Section 3(5) of those administrative regulations shall also apply.

(d) The application shall be verified under oath by the permittee and the proposed operator in the manner required under Section 7 of this administrative regulation.

(e) On or after the date the application has been submitted to the cabinet, the application shall be advertised ~~[at least once]~~ in the newspaper of largest bona fide circulation, according to ~~[the definition in]~~ KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located.

1. The advertisement shall be entitled "Notice of Intention to Mine" and shall be of a form specified in Section 8(5) of this administrative regulation.

2. A copy of the advertisement and proof of publication ~~[acceptable to the cabinet]~~ shall be filed with the cabinet and made a part of the application not later than fifteen (15) days after the date of publication. The advertisement shall include:

a.[4-] The permit number;

b.[2-] The geographic location of the permit area;

c.[3-] The name and business address of the permittee;

d.[4-] A statement that the permittee proposes to change the operator approved in the permit;

e.[5-] The names and business addresses of the currently approved operator and the proposed operator;

f.[6-] The cabinet address to which written comments may be sent under paragraph ~~(f)~~(g) of this subsection; and

g.[7-] The time available for submission of the comments. ~~[by the cabinet. The advertisement shall include, at a minimum, the permit number, the geographic location of the permit area, the name and business address of the permittee, a statement that the permittee proposes to change the operator approved in the permit, the names and business addresses of the currently approved operator and the proposed operator, the cabinet address to which written comments may be sent under paragraph (g) of this subsection and the time available for submission of the comments. A copy of the advertisement and proof of publication acceptable to the cabinet shall be filed with the cabinet and made a part of the application not later than fifteen (15) days after the date of publication.]~~

(f) A person whose interests are or may be adversely affected by the cabinet's decision on the proposed operator change, including an officer of a federal, state, or local government agency, may submit written comments on the application to the cabinet within fifteen (15) days after the date of publication of the advertisement.

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(g) The cabinet ~~shall~~ ~~[may]~~ approve or disapprove the proposed operator change if it finds, in writing, that the proposed operator:

1. Is eligible to act as an operator under the criteria in Section 13(4) of this administrative regulation; and

2. Meets ~~the other applicable requirements off any other requirements specified by the cabinet in order to ensure compliance with~~ KRS Chapter 350 or 405 KAR Chapters 7 through 24.

(h) ~~1. [For a complete and accurate application,] The cabinet shall notify in writing the permittee, the proposed operator, and any commenters on the application, of its decision to approve or deny the application within fifteen (15) working days after the close of the public comment period under paragraph (f) of this subsection.~~

~~2. A period, except that [Periods] of temporary withdrawal shall not be counted against the fifteen (15) working day period available to the cabinet. If the notice, hearing, and conference procedures mandated by KRS Chapter 350 and KAR Title 405 [KAR] prevent a decision from being made within the time period specified in this paragraph, then the cabinet shall have additional time, but not to exceed twenty (20) days from the completion of the notice, to issue its decision, but not to exceed twenty (20) days from the completion of the notice, hearing and conference procedures.~~

(7) Fees. An application for a revision shall include a basic fee except that a minor field revision and an operator change revision shall not have a ~~[Applications for revisions shall include a basic fee [of \$375,] except that minor field revisions and operator change revisions shall have no]~~ basic fee.

(a) The fee for a revision shall be \$1,750 for a major revision and \$750 for a minor revision.

(b) If the revision application proposes an incidental boundary revision that ~~[incidental boundary revisions which]~~ would increase the acreage in the permit, an additional acreage fee of seventy-five (75) dollars per acre, or fraction thereof, shall be included with the application, ~~except that~~ An [No] acreage fee shall not be required for a surface area overlying underground workings that ~~[be required for surface areas overlying underground workings which]~~ will not be affected by surface operations and facilities.

Section 21. Permit Renewals. (1) General requirements for renewal. Any valid, existing permit issued pursuant to this chapter shall carry with it the right of successive renewal, within the approved boundaries of the existing permit, upon expiration of the term of the permit.

(2) Contents of renewal applications.

(a) An application for renewal of a permit ~~[Applications for renewal of permits]~~ shall be submitted within the time prescribed by Section 2(2)(b) of this administrative regulation. Renewal applications shall be submitted on form MPA-09, Application for Renewal of a Mining Permit, ~~[in a form and with content as required by the cabinet]~~ and in accordance with this section, and shall include ~~[at a minimum]:~~

~~1. [(a)]~~ The name and address of the permittee, the term of the renewal requested and the permit number;

~~2. [(b)]~~ A copy of the proposed newspaper notice and proof of publication of same under Section 8 of this administrative regulation;

~~3. [(c)]~~ Evidence that liability insurance under 405 KAR 10:030, Section 4, ~~shall [will]~~ be provided by the applicant for the proposed period of renewal;

~~4. [(d)]~~ A renewal fee of \$750 ~~[\$375];~~

~~5. [(e)]~~ Evidence that the performance bond ~~shall [will]~~ continue in effect for any renewal requested, as well as any additional bond required by the cabinet pursuant to 405 KAR 10:020; and

~~6. [(f)]~~ Any additional, updated, or revised information required to demonstrate compliance with KRS Chapter 350 and 405 KAR Chapters 7 - 24 ~~[revised or updated information which may be required by the cabinet].~~

(3) An application ~~[Applications]~~ for renewal shall be subject to the requirements of Sections 8 through 11, 13, and 16 of this administrative regulation.

(4) An application for renewal shall not include any proposed

revisions to the permit. Revisions shall be made by separate application and shall be subject to the requirements of Section 20 of this administrative regulation.

(5) Term of renewal. Any permit renewal shall be for a term not to exceed the period of the original permit established under Section 17 of this administrative regulation.

(6) Approval or denial of renewal applications.

(a) The cabinet shall approve a complete and accurate application for permit renewal, unless it finds, in writing, that:

1. The terms and conditions of the existing permit are not being satisfactorily met;

2. The present surface coal mining and reclamation operations are not in compliance with the environmental protection standards under KRS Chapter 350 and 405 KAR Chapters 7 through 24;

3. The requested renewal substantially jeopardizes the applicant's continuing responsibility to comply with KRS Chapter 350 and 405 KAR Chapters 7 through 24 on existing permit areas;

4. The applicant has not provided evidence that any performance bond required for the operations ~~shall [will]~~ continue in effect for the proposed period of renewal, as well as any additional bond the cabinet might require pursuant to 405 KAR Chapter 10;

5. Any additional revised or updated information required by the cabinet pursuant to this administrative regulation has not been provided by the applicant; or

6. The applicant has not provided evidence of having liability insurance in accordance with 405 KAR 10:030, Section 4.

(b) In determining whether to approve or deny a renewal, the burden shall be on the opponents of renewal.

(c) The cabinet shall send copies of its decision to the applicant, any persons who filed objections or comments to the renewal, ~~to~~ any persons who were parties to any informal conference held on the permit renewal, and to the field office director of the Office of Surface Mining Reclamation and Enforcement.

(d) Any person having an interest ~~that [which]~~ is or may be adversely affected by the decision of the cabinet shall have the right to administrative and judicial review set forth in Section 24 of this administrative regulation.

Section 22. Transfer, Assignment, or Sale of Permit Rights. (1) General. ~~A [No]~~ transfer, assignment, or sale of the rights granted under any permit issued pursuant to KAR Title 405 shall not be made without the prior written approval of the cabinet, in accordance with this section.

(2) Application requirements. An applicant (successor) for approval of the transfer, assignment, or sale of permit rights shall:

(a) Provide a complete and accurate application, on forms provided by the cabinet, for the approval of the proposed transfer, assignment, or sale. The application shall be signed by both the existing holder of permit rights and the applicant for succession. Additionally, the following information shall be provided:

1. The name and address of the existing permittee and the permit number;

2. A brief description of the proposed action requiring approval;

3. The legal, financial, compliance, and related information required by 405 KAR 8:030, Sections 2 through 10 and 405 KAR 8:040, Sections 2 through 10; and

4. A processing fee of \$750 ~~[\$375];~~

(b) Advertise the filing of the application in the newspaper of largest bona fide circulation, according to ~~[the definition in]~~ KRS 424.110 to 424.120, in the county where the operations are located, indicating the name and address of the applicant, the original permittee, the permit number, the geographic location of the permit, and the address to which written comments may be sent under subsection (3) of this section; ~~and~~ ~~;~~

(c) Obtain sufficient performance bond coverage that ~~shall [which will]~~ ensure reclamation of all lands affected by the permit, including areas previously affected by the existing permittee on the permit being transferred.

(3) Public participation. Any person whose interests are or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any federal, state, or local government agency, may submit written comments on the application to the cabinet within fifteen (15) days of the date of publication of the advertisement.

(4) Criteria for approval. The cabinet may allow a permittee to transfer, assign, or sell permit rights to a successor if it finds, in writing, that the successor:

(a) Is eligible to receive a permit in accordance with the criteria specified in Section 14 of this administrative regulation;

(b) Has submitted a performance bond, in accordance with 405 KAR Chapter 10, which ~~shall~~will ensure reclamation of all lands affected by the permit, including areas previously disturbed by the existing permittee on the permit being transferred ~~and that~~and which is at least equivalent to the bond of the existing permittee;

(c) Has submitted proof that liability insurance, as required by 405 KAR 10:030, Section 4, has been obtained; and

(d) Meets any other requirements specified by the cabinet in order to ensure compliance with KRS Chapter 350 or 405 KAR Chapters 7 through 24.

(5) Notice of decision. The cabinet shall notify the original permittee, the successor, any commenters or objectors, and the field office director of the Office of Surface Mining Reclamation and Enforcement of its final decision.

(6) Permit reissuance. After receiving the notice described in subsection (5) of this section, the successor shall immediately provide proof to the cabinet of the consummation of the transfer, assignment, or sale of permit rights. Upon submission of this proof, the cabinet shall reissue the original permit in the name of the successor.

(7) Rights of successor. All rights and liabilities under the original permit shall pass to the successor upon reissuance of the permit, except that the original permittee shall remain liable for any civil penalties resulting from violations occurring prior to the date of reissuance of the permit. The cabinet shall not approve transfer of a surface coal mining permit to any person who would be ineligible to receive a new permit under KRS 350.130(3).

(8) Requirements for new permits for persons succeeding to rights granted under a permit. A successor in interest who is able to obtain appropriate bond coverage may continue surface coal mining and reclamation operations according to the approved mining and reclamation plan and permit of the original permittee. ~~A[However, any]~~ successor in interest seeking to change the conditions of mining or reclamation operations~~[-]~~ or any of the terms or conditions of the original permit shall make application for a new permit, revision, or amendment, as appropriate.

(9) Release of bond liability. The cabinet ~~shall~~may release the prior permittee from bond liability on the permit area if the successor in interest has:

(a) Filed a performance bond satisfactory to the cabinet;

(b) Received written approval of the cabinet for the transfer, sale, or assignment of rights;

(c) Submitted proof of execution of the agreement; and

(d) ~~Assumed the liability under KAR Title 405 for the reclamation of the areas affected by all prior~~Assumed the liability under KAR Title 405 for the reclamation of the areas affected by all prior~~filed a performance bond satisfactory to the cabinet, has received written approval of the cabinet for the transfer, sale or assignment of rights, has submitted proof of execution of the agreement, and has assumed all liability under 405 KAR for reclamation of the areas affected by all prior~~ permittees.

Section 23. Amendments. (1) Except for an incidental boundary revision, an extension~~incidental boundary revisions, no extensions~~ to an area covered by a permit shall ~~not~~ be approved under Section 20 (permit revisions) or Section 21 (permit renewals) of this administrative regulation.

(a) An extension~~All such extensions~~ shall be made by application for another permit.

(b) ~~If[However, if]~~ the permittee desires to add the new area to his existing permit in order to have existing areas and new areas under one (1) permit, the cabinet shall amend the original permit, if the applicant complies with procedures and requirements applicable to an application for an original permit in accordance with KAR Title 405~~may so~~ amend the original permit, but the application for the new area shall be subject to all procedures and requirements applicable to applications for original permits under KAR Title 405 [KAR].

(2) A fee for an amendments to existing permits shall be submitted to the cabinet as indicated in Section 6~~7~~(2) of this adminis-

trative regulation.

Section 24. Administrative and Judicial Review. (1) Following the final decision of the cabinet concerning the application for a permit, revision, or renewal thereof, application for transfer, sale, or assignment of rights or concerning an application for coal exploration, the applicant, permittee, or any person with an interest ~~that[which]~~ ~~is or~~ may be adversely affected may request a hearing on the reasons for the final decision in accordance with 405 KAR 7:092, Section 8.

(2) Any applicant or any person with an interest ~~that[which]~~ ~~is or~~ may be adversely affected and who has participated in the administrative proceedings as an objector shall:

(a) Have the right to judicial review as provided in KRS ~~350.0301 and 350.0305~~ 224.085 if the applicant or person is aggrieved by the decision of the cabinet in an administrative hearing requested pursuant to subsection (1) of this section; or

(b) Have the right to an action in mandamus pursuant to KRS 350.250 if the cabinet fails to act within time limits specified in KRS Chapter 350 or 405 KAR Chapters 7 through 24.

Section 25. Improvidently Issued Permits. (1) Permit review. If the cabinet has reason to believe that it improvidently issued a surface coal mining and reclamation permit, the cabinet shall review the circumstances under which the permit was issued, using the criteria in subsection (2) of this section. If the cabinet finds that the permit was improvidently issued, the cabinet shall comply with subsection (3) of this section.

(2) Review criteria. The cabinet shall find that a surface coal mining and reclamation permit was improvidently issued if:

(a) Under the violation review criteria of the cabinet upon permit issuance~~at the time the permit was issued~~:

1. The cabinet should not have issued the permit because of an unabated violation or a delinquent penalty or fee; or

2. The permit was issued on the presumption that a notice of violation was in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation, but a cessation order subsequently was issued; ~~and~~

(b) The violation, penalty, or fee:

1. Remains unabated or delinquent; and

2. Is not the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; and

(c) If the permittee was linked to the violation, penalty, or fee through ownership or control, under the violations review criteria of the regulatory program upon permit issuance~~at the time the permit was issued~~ an ownership or control link between the permittee and the person responsible for the violation, penalty, or fee still exists, or if the link was severed the permittee continues to be responsible for the violation, penalty, or fee.

(3) Remedial measures. If the cabinet, under subsection (2) of this section, finds that because of an unabated violation or a delinquent penalty or fee a permit was improvidently issued, the cabinet shall use one (1) or more of the following remedial measures:

(a) Implement, with the cooperation of the permittee or other person responsible, and of the responsible agency, a plan for abatement of the violation or a schedule for payment of the penalty or fee;

(b) Impose on the permit a condition requiring that in a specified~~reasonable~~ period of time the permittee or other person responsible abate the violation or pay the penalty or fee;

(c) Suspend the permit until the violation is abated or the penalty or fee is paid; or

(d) Rescind the permit under subsection (4) of this section.

(4) Rescission procedures. If the cabinet, under subsection (3)(d) of this section, elects to rescind an improvidently issued permit, the cabinet shall serve on the permittee a notice of proposed suspension and rescission ~~that[which]~~ includes the reasons for the finding of the cabinet under subsection (2) of this section and states that:

(a) Automatic suspension and rescission. After a specified period of time not to exceed ninety (90) days the permit automatically ~~shall~~will become suspended, and not to exceed ninety (90)

days thereafter rescinded, unless within those periods the permittee submits proof, and the cabinet finds, that:

1. The finding of the cabinet under subsection (2) of this section was erroneous;

2. The permittee or other person responsible has abated the violation on which the finding was based, or paid the penalty or fee, to the satisfaction of the responsible agency;

3. The violation, penalty, or fee is the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; or

4. Since the finding was made, the permittee has severed any ownership or control link with the person responsible for, and does not continue to be responsible for, the violation, penalty, or fee;

(b) Cessation of operations. After permit suspension or rescission, the permittee shall cease all surface coal mining and reclamation operations under the permit, except for violation abatement and for reclamation and other environmental protection measures as required by the cabinet; and

(c) Right to request a formal hearing. Any permittee aggrieved by the notice may request a formal hearing under 405 KAR 7:092, Section 9.

Section 26. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Preliminary Application", MPA-00, August 2010 [November 1991];

(b) "Permittee Information for a Mining Permit", MPA-01, August 2010 [November 1991];

(c) "Operator Information for a Mining Permit", MPA-02, August 2010 [November 1991];

(d) "Technical Information for a Mining Permit", MPA-03, August 2010 [November 1991];

(e) "Surface Owner's Affidavit: Lands Historically Used for Cropland", MPA-03-20.1.B, November 1991;

(f) "Disinterested Third Party Affidavit: Lands Historically Used for Cropland", MPA-03-20.1.C, November 1991;

(g) "Application to Revise a Mining Plan", MPA-04, November 1991;

(h) "Update of Permittee or Operator Information", MPA-05, August 2010 [November 1991];

(i)(4) "Change of Corporate Owners, Officers or Directors", MPA-06, August 2010 [November 1991];

(j)(4) "Application to Transfer a Mining Permit", MPA-07, August 2010 [November 1991];

(l)(4) "Revision Application to Change Operator", MPA-08, August 2010 [November 1991];

(k)(4) "Application for Renewal of a Mining Permit", MPA-09, August 2010 [November 1991];

(l)(4) "Application for a Coal Marketing Deferment", MPA-10, August 2010 [November 1991];

(m)(4) "Minor Field Revision Application Form", SME 80, revised August 2010 [September 1991]; and

(n)(4) "Reclamation Advisory Memorandum #124, Reforestation Initiative", March 1997.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Natural Resources, 2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LEONARD K. PETERS, Secretary

APPROVED: July 13, 2010

FILED WITH LRC: July 15, 2010 at 2 p.m.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, Office of the Commissioner, 2 Hudson Hollow Road, Frankfort, Kentucky 40601, phone (502) 564-6940, fax (502) 564-6764, email Michael.Mullins@ky.gov.

**JUSTICE AND PUBLIC SAFETY CABINET
Kentucky Law Enforcement Council
(As Amended at ARRS, August 10, 2010)**

**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. Push-ups [Twenty (20)] [Pushups]; and

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

(b) A recruit shall pass[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 shall[must] bench press at least fifty-five and three-tenths (55.3) percent of body weight;

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

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

d. 10.5 points - Recruit shall[must] bench press at least sixty-

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eight and five-tenths (68.5) percent of body weight; and

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

2. Sit-ups:

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

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

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

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

3. 300 meter run:

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

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

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

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

4. Push-ups:

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

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

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

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

e. 11 points - Recruit ~~shall~~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 ~~shall~~must complete in ~~at least~~ 1,076 seconds (17:56) or less;

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

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

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

e. 11 points - Recruit ~~shall~~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.

(d) ~~(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.~~

(e) 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; and

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, **incorporated by reference in 503 KAR 1:140**. ~~[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. Push-ups. Twenty-five (25) push-ups; 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 ~~fail~~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

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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; and

(f) ~~Area VI:~~

1. Defensive Tactics: Written;

2. Defensive Tactics: Practical;

3. Academic Examination 5: Final Exam; and

4. Practical Examination 2. ~~Academic Examination 4 (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 ~~2[H].~~

(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 ~~2[H]~~, 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 ~~fail~~~~[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

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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.

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Criminal Justice Training
(As Amended at ARRS, August 10, 2010)**

503 KAR 3:010. Basic law enforcement training course recruit conduct requirements; procedures and penalties.

RELATES TO: KRS 15A.070(1)

STATUTORY AUTHORITY: KRS 15A.070(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS

15A.070(1) requires the~~authorizes~~ Department of Criminal Justice Training to establish, supervise, and coordinate training programs and schools for law enforcement personnel. KRS 15A.070(5) authorizes the commissioner of the Department of Criminal Justice Training to promulgate administrative regulations. This administrative regulation establishes conduct requirements of recruits attending basic law enforcement training courses conducted by the Department of Criminal Justice Training, procedures for disciplinary action, and penalties for violations of conduct requirements.

Section 1. Uniforms, [Uniforms and] Operator's License, and Criminal History Records Check required.

(1) A recruit shall:

~~(a) Provide the uniforms required in Section 6(8) of this administrative regulation; and~~

~~(b) Present a valid motor vehicle operator's license to participate in the basic training course.~~

~~(2) The recruit's employing agency shall submit a letter to the department that:~~

~~(a) A criminal history check, in accordance with [the requirements of] 503 KAR 1:140, Section 4(1)(f) and (2), has been conducted within ninety (90) days before the recruit attends [of the recruit attending] law enforcement basic training; and~~

~~(b) The recruit is not prohibited by state or federal law from:~~

~~1. Possessing a firearm; or~~

~~2. Accessing the Criminal Justice Information System (CJIS) or any other restricted records database.~~

~~(3) If the recruit has been in precertified status, pursuant to KRS 15.386(1), for less than ninety (90) days before arriving for law enforcement basic training, an additional criminal records check shall not be required of the employing agency.~~

Section 2. Removing a Recruit from the Course. (1) Unqualified recruit. If a recruit is not qualified to participate in the basic training course, he shall:

(a) Be removed from basic training by the:

1. Commissioner;
2. Director;
3. Branch manager; or
4. Section supervisor; and

(b) Receive no credit for the part of the course he has completed.

(2) If a recruit is removed from training, pursuant to subsection (1) of this section, within thirty (30) days of the removal, he may request in writing an administrative hearing, which shall comply with KRS Chapter 13B.

(3) A recruit shall be considered unqualified if he:

(a) Or his law enforcement agency files an incomplete or fraudulent application to attend basic training, or otherwise fails to comply with admissions requirements, including the criminal history letter required in Section 1(2) of this administrative regulation;

(b) Is not presently employed as a law enforcement officer and has not received special permission to attend;

(c) Arrives at the beginning of basic training physically unable to participate because of:

1. Physical injury;
2. Being under the influence of alcohol or drugs (prescription or illegal); or

3. Failure of the physical training entry requirements as found in 503 KAR 1:110 if the recruit is required to complete basic training in order to fulfill the peace officer certification provisions as found in KRS 15.380 to ~~15.404~~**15.402**;

(d) Has had prior disciplinary action while at DOCJT which would prevent participation (expelled or suspended from training), or has a pending disciplinary action which was initiated during a previous DOCJT training course; or

(e) Is unprepared to participate in training due to his arrival without the required equipment, license, uniform, or preparation;

(4) Agency's request: The department shall remove a recruit from basic training upon the department's receipt of a written request from the recruit's law enforcement agency. The recruit shall receive no credit for the part of the course he has completed.

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Section 3. Gifts. Gifts from recruits to department staff members shall conform to the Executive Branch Code of Ethics (KRS 11A.040).

Section 4. Penalties for Misconduct. (1) The following penalties shall apply to a recruit's failure to meet conduct or Honor Code requirements of the department. The penalties are listed in order of decreasing severity.

(a) Expulsion. The recruit is dismissed from the course, and all privileges are terminated. The recruit shall not reapply for admission to the department's basic training course for two (2) years from the date of expulsion.

(b) Suspension. The recruit is suspended from training for a specified period of time, not to exceed one (1) year; all privileges are rescinded during the suspension period.

(c) Probation. The recruit is placed on probation for a specified period of time, not to exceed the final date of the basic training course in which he is currently enrolled. A loss of privileges may be imposed during the period of probation. A violation of any conduct or Honor Code requirement during the period of probation shall result in an extension of the period of probation, additional loss of privileges, suspension, or expulsion.

(d) Loss of privileges. The recruit's privileges as specified in the imposed penalty are rescinded for a stated period of time. The recruit's participation in training activities is not affected.

(e) Written reprimand. The recruit is reprimanded in writing for violating a conduct or Honor Code requirement.

(f) Verbal warning. The recruit is warned verbally that he has violated a conduct or Honor Code requirement.

(2) Second and subsequent violations.

(a) If a recruit has received a penalty for violating a conduct or Honor Code requirement, upon a second violation of any conduct or Honor Code requirement the next higher penalty shall be added to the list of penalties in Sections 6 and 7 of this administrative regulation which may be imposed for the second violation.

(b) If a recruit has previously received two (2) penalties for violating two (2) conduct or Honor Code requirements, upon a third or subsequent violation of any conduct or Honor Code requirement the next two (2) higher penalties in Sections 6 and 7 of this administrative regulation shall be added to the list of penalties which may be imposed for the third or subsequent violation.

(3) Giving notice of disciplinary action to recruit. The department shall give written notice to a recruit of any penalty imposed upon him.

(4) Penalty records.

(a) The department shall keep a written record of any penalty imposed on a recruit.

(b) A copy of any penalty imposed on a recruit shall be placed in his basic training file.

(c) Only the department, the recruit, and the recruit's agency head shall have access to the penalty records in a recruit's basic training file unless broader access is required by law.

Section 5. Termination of Dangerous or Disruptive Situation. If the conduct or condition of a recruit constitutes an immediate danger or an immediate threat of danger to self or others, or is disruptive of, or is an immediate threat to be disruptive of a department activity, a department staff member may take all reasonable steps necessary to terminate the situation.

Section 6. Conduct Requirements. A recruit attending the basic training course shall meet the following conduct requirements:

(1) General conduct, chain of command. All communications shall follow chain of command of the department. Exceptions are the unavailability of a supervisor, or the recruit's complaint regarding a supervisor. Penalty: verbal warning or written reprimand.

(2) General conduct, insubordination. A recruit shall:

(a) Obey a lawful order from a department staff member. Penalty: verbal warning, written reprimand, loss of privileges, probation, or suspension.

(b) Refrain from vulgarity, rudeness, violent, threatening, or offensive confrontation, or other disrespectful conduct directed toward a department staff member, recruit or other department trainee or guest. Penalty: verbal warning, written reprimand, proba-

tion, or suspension.

(3) General conduct, grooming. The recruit shall be clean shaven with sideburns no longer than the bottom of the ear lobe. A mustache is permitted if the recruit has the mustache upon arrival and keeps it neatly trimmed. A beard shall not be permitted unless the recruit receives permission from the department based upon a written request from the recruit's agency and good cause shown. A recruit's hair shall be clean and neat and shall not be over the collar. Penalty: verbal warning or written reprimand.

(4) General conduct, alcoholic beverages and other intoxicants.

(a) Regardless of amount, a recruit shall not possess, consume nor be under the influence of alcoholic beverages, controlled substances, or other intoxicating substances not therapeutically prescribed by a physician or a qualified medical professional while attending a basic training course which shall include all dates of training and periods when residing in the dormitory, including the weekend if the recruit is granted permission to stay beyond the normal Friday evening checkout. "Attending a basic training course" shall not include the weekend period during which recruits check out of the dormitory and return to their homes. A recruit shall not report to the dormitory having consumed alcoholic beverages, controlled substances, or other intoxicating substances. A recruit shall submit to testing as requested by the department to determine the presence of alcoholic beverages, or controlled or other intoxicating substances at the department's expense. Testing shall not be required to impose a penalty under this subsection, but may be requested if a department or dormitory staff member, instructor, section supervisor, branch manager, director or commissioner has a reasonable suspicion that the recruit has violated the provisions of this section. Testing may be randomly requested of all members of a basic training class or all dormitory residents. If a test is requested, a recruit shall be considered to have consumed alcoholic beverages if his or her blood alcohol concentration is 0.01 percent or greater. Penalty: written reprimand, loss of privileges, probation, suspension or expulsion.

(b) If a recruit has taken a controlled substance as prescribed by a physician or a qualified medical professional or has taken any other medication, whether prescribed or not, he shall not participate in any training activity if he is under the influence thereof to the extent that the recruit may be impaired or may endanger himself or other persons or property. A recruit shall advise the class coordinator or the section supervisor in writing of the use of a controlled substance or medication whether or not it has been prescribed by a physician or a qualified medical professional. Penalty: verbal warning, written reprimand, probation, or suspension.

(c) Confiscation.

1. If a dormitory staff member, department instructor, section supervisor, or branch manager observes an unlawfully-possessioned intoxicating substance, he shall immediately confiscate it.

2. Confiscated items shall be stored in a safe and secure facility of the department pending appropriate disposition.

(5) General conduct, weapons and other dangerous devices.

(a) A recruit shall not possess deadly weapons (as defined in KRS 500.080), ammunition, destructive devices or booby trap devices (as defined in KRS 237.030), hazardous substances (as defined in KRS 224.01-400), knives other than an ordinary pocket knife, fireworks, or instruments used by law enforcement for control purposes including batons, stun guns, Mace, and pepper spray, on property used by the department except under circumstances specifically authorized by the department. Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension, or expulsion.

(b) Weapons specifically designated by the department to be used for training purposes shall be stored in a vault provided by the department at all times when they are not being used directly in training activities and may be removed only for scheduled training, servicing, cleaning, or repair. Servicing, cleaning, and repairs of weapons (other than repairs which may require the expertise of a qualified gunsmith) shall be carried out only as authorized by the section supervisor and only in the presence of a certified firearms instructor. Penalty: verbal warning, written reprimand, loss of privileges, or probation.

(c) Confiscation.

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1. If a dormitory staff member, department instructor, section supervisor, branch manager, director or commissioner observes an unlawfully-possessed weapon or other dangerous device he shall immediately confiscate it.

2. Confiscated items shall be stored in a safe and secure facility of the department pending appropriate disposition.

(6) General conduct, department property.

(a) A recruit shall not recklessly, negligently, or intentionally damage, destroy, fail to return, or be wasteful of property of the department or any other facility used by the department. Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension or expulsion.

(b) A recruit shall not have successfully completed basic training, and shall not be allowed to graduate until he has returned all issued items or made satisfactory arrangements to pay for unreturned or damaged items.

(7) General conduct, conduct unbecoming a recruit. A recruit shall not:

(a) Engage in criminal activity, including acts which would constitute a felony, misdemeanor or violation, while enrolled in a basic training class. Depending on the nature of the conduct, the recruit shall be penalized by a verbal warning, written reprimand, loss of privileges, probation, suspension or expulsion. Additionally, the appropriate prosecutorial authority shall be notified of the activity if it constitutes a felony or class A misdemeanor, and may be notified of other activity if appropriate.

(b) Engage in conduct which creates a danger or risk of danger to the recruit or another, possess obscene matter as defined in KRS 531.010, engage in conduct which is unreasonably annoying, engage in fighting or in violent, tumultuous or threatening conduct, engage in sexual harassment or conduct which is patently offensive. Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension or expulsion.

(c) Engage in conduct which violates an Eastern Kentucky University policy or rule. The location of the policies and rules shall be provided to each recruit at the beginning of basic training. ~~A copy of the policies and rules shall be given to each recruit at the beginning of the course.~~ Penalty: verbal warning, written reprimand, loss of privileges, or probation.

(8) Training activities, uniforms.

(a) A recruit shall acquire all necessary uniforms and wear them as required by the department. Penalty: verbal warning, written reprimand, loss of privileges, or probation.

(b) Navy blue utility uniforms shall be:

1. Clean, pressed and in good condition;
2. Appropriately sized to fit the recruit and not excessively loose, baggy, or tight;
3. Worn over a clean white or department-issued tee-shirt, visible at the neck; and
4. Worn with a wide black police-type belt, clean black police-type footwear, black or navy blue socks, and when outdoors, a department cap. Penalty: verbal warning or written reprimand.

(c) Jewelry.

1. The recruit may wear one (1) ring per hand. A wedding and engagement ring worn together shall be considered one (1) ring.

2. Necklaces, earrings, bracelets, and other jewelry shall not be worn unless authorized by the coordinator. Penalty: verbal warning or written reprimand.

(d) A name tag, provided by the department, shall be worn on the left shirt-pocket flap. Penalty: verbal warning or written reprimand.

(e) Sleeves on winter shirts shall not be rolled up outside the classroom. Penalty: verbal warning or written reprimand.

(f) The physical fitness uniform shall be provided by the recruit and shall consist of solid dark blue athletic shorts, solid dark blue sweat shirt and sweat pants, solid white athletic socks, and a pair of athletic shoes. A department-issued tee shirt shall be worn during physical training. Penalty: verbal warning or written reprimand.

(g) Optional clothing may be worn during a training activity if authorized by the class coordinator.

(9) Training activities, absences.

(a) A recruit is absent if he is not physically present in a class or other required department activity for ten (10) minutes or more. A recruit is tardy if he is not physically present at a class or other

required department activity for fewer than ten (10) minutes. A recruit shall give advance notice of an absence if possible. Penalty for an unexcused absence: verbal warning, written reprimand, loss of privileges, probation, or suspension; penalty for an unexcused tardiness: verbal warning or written reprimand.

(b) All absences from basic training shall be approved by the section supervisor or branch manager.

(c) If a recruit is absent, excused or unexcused, he shall make up for the absence by completing an assignment provided by the class coordinator and class administrative specialist. Failure to make up the work shall be deemed a failure of that training area.

(10) Training activities, breaks. Recruits shall be allowed a ten (10) minute break per hour of instruction if possible. Breaks shall be taken only in areas designated by the department. Penalty: verbal warning or written reprimand.

(11) Training activities, general conduct.

(a) A recruit shall be attentive during training activities. Penalty: verbal warning or written reprimand.

(b) A recruit shall not possess any electronic devices during scheduled training hours unless written permission is granted by the class coordinator. Electronic devices shall include cellular telephones, mp3-type audio players, cameras, and recording devices. Penalty: verbal warning or written reprimand.

(c) A recruit shall not use tobacco products during, or bring food or drink into a training activity unless so permitted by the training staff. Penalty: verbal warning or written reprimand.

(d) [(e)] A recruit shall not engage in conduct which creates or may create a risk of injury to others during a training session. Penalty: probation, suspension, or expulsion.

(e) [(f)] A recruit shall complete assignments by the deadline established by the instructor or coordinator. Penalty: verbal warning or written reprimand.

(12) Training activities, dishonesty.

(a) A recruit shall not cheat or attempt to cheat on a test, or alter or attempt to alter a test grade or other evaluation result. A recruit shall not permit, assist or facilitate this conduct by another recruit. Penalty: suspension or expulsion.

(b) A recruit shall not cheat or attempt to cheat on any other assignment or activity, engage in any other conduct intended to gain an undeserved evaluation, or falsify a document provided to the department during basic training. A recruit shall not permit, assist or facilitate this conduct by another recruit. Penalty: written reprimand, loss of privileges, probation, suspension or expulsion.

(13) Residence hall.

(a) During the basic training course, [when attending in Madison County,] a recruit shall reside in the residence hall designated by the department.

(b) A recruit shall return to his residence hall at curfew times designated by the commissioner, Sunday through Thursday evenings, and Friday or Saturday if a training session is scheduled for the following day, and remain there until 5 a.m. the next morning. Exceptions shall be approved by the class coordinator and reported in writing through channels to the director. Penalty: verbal warning, written reprimand, loss of privileges, probation.

(c) A recruit shall observe "lights out" thirty (30) minutes past the designated curfew. [by 11:30 p.m.] This time may be temporarily moved up or extended by the branch manager or designee based upon training or testing activities the following day. [Notification of any time change shall be given to each recruit in writing.] Penalty: verbal warning or written reprimand.

(d) Each recruit shall be responsible for cleaning his area. Each morning, prior to leaving for class training, a recruit shall ensure his room is clean and free of trash, with beds made and the room ready for inspection. Penalty: verbal warning, written reprimand, loss of privileges.

(e) The use of cooking appliances or space heaters is prohibited. Penalty: verbal warning, written reprimand, loss of privileges.

(f) All residence hall rooms, closets, and containers therein may be inspected by department staff for purposes of safety, sanitation and rule violations.

(g) A recruit residing at the residence hall shall not:

1. Have any person of the opposite sex in his room, or visit in the room of a recruit of the opposite sex without the permission of the class coordinator. Penalty: verbal warning, written reprimand,

loss of privileges, probation, or suspension.

2. Have a visitor in his room after 9 p.m. Penalty: verbal warning or written reprimand, loss of privileges.

3. Keep pets, animals, or birds of any kind in his room. Penalty: verbal warning, written reprimand, loss of privileges.

4. Engage in dangerous, disruptive, immoral or obscene behavior. Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension, or expulsion.

Section 7. Honor Code. (1) The recruit shall abide by the provisions of the Honor Code which reads as follows:

We are a dynamic team of individuals who possess a wide array of talent and strengths. In order for our team to grow and be successful, we will respect the leadership of the agency and follow directives to the best of our ability. We will make sacrifices for the benefit of the team. We will practice humility and show a spirit of compromise. As recruits of the Department of Criminal Justice Training, Law Enforcement Basic Training class, we will not lie, steal or cheat nor tolerate any among us who do.

We will keep our private lives honorable as an example to all. We will be exemplary in obeying the laws of the commonwealth and the administrative regulations of the Department of Criminal Justice Training. Whatever we see or hear of a confidential nature or confided to us in our official capacity shall be kept confidential unless revelation is necessary in the performance of duty. We will never allow personal feelings, prejudices, ill will or friendships to influence our decisions.

We know that each of us is individually responsible for standards of professional performance. Therefore, we will make the utmost effort to improve our level of knowledge and competence.

We recognize the badge of our office as a symbol of public faith and accept it as a public trust to be held so long as we are true to the ethics of the police service. We will constantly strive to achieve these ideals, dedicating ourselves to our chosen profession - law enforcement. Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension or expulsion.

(2) The coordinator shall designate a minimum of one (1) Honor Code representative during the first week of basic training. The Honor Code representative may be replaced:

(a) For nonperformance of duties, including conduct violations; or

(b) If the coordinator determines that a rotating assignment as Honor Code representative is in the best interest of the class.

(3) All recruits shall report Honor Code violations to the Honor Code representative who shall report the offense to the class coordinator. The representative shall recommend the penalty to be imposed for the violation.

(4) All disciplinary procedures contained in this administrative regulation shall apply to the Honor Code violation. The department may pursue separately any additional offenses discovered during the investigation of the Honor Code violation. The department may charge a recruit with an Honor Code violation without a prior report from the Honor Code representative. A penalty recommendation for the violation shall be solicited from the Honor Code representative.

Section 8. Department's Responsibilities to Recruit's Agency. In order to keep the agency advised of the recruit's progress and performance in basic training so that the agency may adequately assess the recruit's ability to perform required duties, the department shall provide the following to the police chief, sheriff or chief administrator of the recruit's agency:

(1) Recruit performance report which shall be completed at six (6) week intervals and shall include recruit conduct, demonstrated leadership abilities, examination scores, physical fitness scores and overall effort on performance, observed social and interpersonal skills, and appearance.

(2) Immediate notice of specific nonperformance or lack of progress.

(3) Immediate notice of any off-campus activity which reflects negatively on the profession, including the following:

(a) Parking a marked police vehicle at a:

1. Bar;
2. Tavern;

3. Lounge;
 4. Nightclub; or
 5. Other establishment with the primary purpose of serving alcoholic beverages;
 - (b) Disorderly conduct;
 - (c) Speeding; or
 - (d) Other behavior that gives rise to a citizen's complaint.
- (4) Written notice of any conduct or Honor Code penalty imposed upon the recruit.

(5) Notice if a recruit has been charged with a violation of a conduct or Honor Code requirement and has requested a hearing.

(6) Notice if a recruit has been removed from training pending an initial appearance before the commissioner as defined in Section 10 of this administrative regulation, or if a recruit has been removed from training pending a disciplinary hearing as defined in Section 14(3) of this administrative regulation.

(7) Immediate notice of concerns related to the recruit's safety, or physical or emotional health.

Section 9. Summary Discipline. Except for summary discipline, a penalty shall not be imposed upon a recruit unless charges have first been brought by the legal officer.

(1) The following department staff members have the authority to impose the specified penalties summarily without meeting the requirements of the formal disciplinary procedures provided by Sections 10 through 15 of this administrative regulation. To have the authority to impose summary discipline, the staff member shall have reasonable grounds to believe the recruit has engaged in the misconduct.

(a) A department instructor may summarily impose a verbal warning.

(b) The section supervisor, branch manager, director, or commissioner may summarily impose a verbal warning, or written reprimand.

(c) The branch manager, director, or commissioner may summarily impose a verbal warning, written reprimand, or loss of privileges consisting only of a change in curfew.

(2) Before imposing a penalty summarily, the staff member shall give the recruit the opportunity to give an explanation.

(3) A summarily imposed penalty shall be reviewed by, and may be rescinded or modified by, the immediate supervisor of the staff member imposing the penalty. The reviewer shall provide the recruit with the opportunity to give an explanation.

Section 10. Removal From Training Pending an Initial Appearance Before the Commissioner. (1) If a charge is filed against a recruit, the commissioner or director may remove the recruit from some or all training until the recruit's initial appearance before the commissioner if he has reasonable grounds to believe the alleged misconduct took place and:

(a) He has reasonable suspicion to believe the recruit would be dangerous or disruptive if not removed; or

(b) The recruit has been charged with misconduct for which suspension or expulsion is authorized, and the facts demonstrate that suspension or expulsion is the appropriate penalty should the recruit be found guilty of the conduct violation.

(2) A recruit who has been removed from training pending an initial appearance before the commissioner shall be provided the initial appearance within three (3) training days of the removal.

Section 11. Complaint. Anyone having reasonable grounds to believe that a recruit has violated any of the conduct or Honor Code requirements identified in this administrative regulation may file a complaint with the section supervisor. This complaint shall be in writing setting forth the facts upon which the complaint is based.

Section 12. Investigation by Section Supervisor. (1) If the section supervisor or his or her designee receives a complaint of or witnesses apparent misconduct, he or she shall take statements and otherwise investigate the matter.

(2) After investigating the matter, the section supervisor shall:

- (a) Take no action if none is justified by the evidence;
- (b) Impose appropriate summary discipline; or
- (c) File, with the legal officer, a written request that charges be

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brought against the recruit. The request for charges shall describe the alleged misconduct and designate the specific conduct requirements violated. All pertinent evidence and documents including the complaint, and statements of the recruit and witnesses shall be forwarded to the legal officer.

Section 13. Review by Legal Officer; Placing Charges. (1) The legal officer shall review the request for charges and the supporting evidence and documents.

(2) The legal officer may make or cause further inquiry into the matter for additional information.

(3) The legal officer shall:

(a) File charges against the recruit as he believes are justified by the evidence; or

(b) Deny the request for charges if the evidence does not support any charges. If the legal officer declines to file charges, he shall provide the commissioner with a statement of his reasons for not filing charges.

(4) The charging document shall:

(a) Be in writing;

(b) Particularly describe the alleged misconduct so as to reasonably inform the recruit of the nature of the allegation;

(c) State the time, date and place the recruit shall make an initial appearance before the commissioner to answer the charges;

(d) Be signed by the legal officer; and

(e) Be served upon the recruit at least forty-eight (48) hours before his initial appearance before the commissioner.

Section 14. Initial Appearance Before the Commissioner. (1) The initial appearance before the commissioner shall be held no more than five (5) training days after the charges have been served on the recruit. If the recruit after receiving proper notice, fails to appear, the commissioner may proceed in his absence and the recruit shall be notified in writing of any action taken.

(2) At the initial appearance before the commissioner:

(a) The legal officer shall:

1. Read the charges to the recruit; and

2. Explain to the recruit:

a. The charges;

b. His right to a hearing in accordance with KRS Chapter 13B; and

c. His right to be represented by legal counsel.

(b) The legal officer shall explain to the recruit the possible answers to the charges: admit the charges are true, deny the charges are true but waive a hearing, or deny the charges are true and ask for a hearing.

(c) The commissioner shall advise the recruit of the penalty which shall be imposed if the recruit admits the charges or waives a hearing.

(d) The recruit shall be requested to answer the charges.

(e) If the recruit chooses to waive his rights and admits the charges or denies the charges but waives a hearing:

1. He shall be permitted to make a statement of explanation; and

2. The commissioner shall impose a penalty.

(f) If the recruit denies the charges and requests a hearing, the commissioner shall set a date for the hearing. A notice of administrative hearing as required by KRS 13B.050 shall be served on the recruit within forty-eight (48) hours of the initial appearance before the commissioner.

(g) If the recruit remains silent or refuses to answer the charges, the commissioner may suspend the recruit from training until the recruit answers the charges or the legal officer drops the charges.

(3) The commissioner may remove the recruit from some or all training until the hearing if:

(a) He has reasonable grounds to believe the recruit would be dangerous or disruptive if not removed; or

(b) The recruit is charged with misconduct serious enough to authorize expulsion as a possible penalty.

Section 15. Hearing. The hearing shall be conducted in accordance with KRS Chapter 13B.

JOHN W. BIZZACK, Ph.D., Commissioner

APPROVED BY AGENCY: May 14, 2010

FILED WITH LRC: May 14, 2010 at noon

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.

JUSTICE AND PUBLIC SAFETY CABINET Department of Criminal Justice Training (As Amended at ARRS, August 10, 2010)

503 KAR 3:040. Telecommunications academy trainee requirements; misconduct; penalties; discipline procedures.

RELATES TO: KRS 15.530-15.590

STATUTORY AUTHORITY: KRS 15.590, 15A.070(1), (5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.070(1) requires the Department of Criminal Justice Training to establish, supervise, and coordinate training programs and schools for law enforcement personnel. KRS 15A.070(5) authorizes the commissioner to promulgate administrative regulations. ~~[15.590 requires the Commissioner of the Department of Criminal Justice Training to promulgate necessary administrative regulations for the administration of telecommunications training, in-service training and practices.]~~ This administrative regulation ~~establishes~~prescribes conduct requirements of trainees attending the telecommunications academy conducted by the Department of Criminal Justice Training. ~~prescribes~~prescribes procedures for disciplinary action, and penalties for violations of conduct requirements~~sets penalties~~.

Section 1. Uniforms and Criminal History Records Check required. (1) A trainee shall wear a uniform, approved by the department, while participating in the telecommunications academy.

(2) The required uniform shall consist of:

(a) Men:

1. ~~[Gray]~~ Polo shirt with DOCJT logo, supplied by the department;

2. Solid black dress pants with belt loops. Cargo pants or low-cut pants shall not be worn;

3. Black belt;

4. Black socks above the ankles; and

5. Black, plain-toe, dress shoes. Athletic shoes shall not be worn with the uniform.

(b) Women:

1. ~~[Gray]~~ Polo shirt with DOCJT logo, supplied by the department;

2. Solid black dress pants with belt loops or knee-length skirt. Cargo pants or low-cut pants shall not be worn:

3. Black belt;

4. Black socks or hose above the ankles; and

5. Black, plain, closed-toe, dress shoes. Athletic shoes shall not be worn with the uniform.

(3) The following may be worn with the uniform:

(a) Dress jacket or sport coat, solid gray or dark blue is recommended; and

(b) ~~[Pine issued by the trainee's agency; and~~

~~(e)] The Department of Criminal Justice Training cap [which shall be issued to the trainee on the first day of the academy].~~

(4) The trainee's employing agency shall submit a letter to the department that:

(a) A criminal history check, in accordance with [the requirements of] 503 KAR 1:140, Section 4(1)(f) and (2), has been conducted within ninety (90) days before the trainee attends [of the trainee attending] the Telecommunications Academy; and

(b) The trainee is not prohibited by state or federal law from accessing the Criminal Justice Information System (CJIS) or any other restricted records database.

(5) If the criminal history check required by KRS 15.540(1)(c) has been performed within ninety (90) days before the trainee arrives for the Telecommunications Academy, an additional criminal

nal records check shall not be required of the employing agency.

Section 2. Removing a Trainee from the Academy. (1) Unqualified trainee. If a trainee does not meet the law enforcement telecommunicator qualifications in KRS 15.540, he shall:

(a) Be removed from the academy by the:

1. Director;
2. Branch manager; or
3. Section supervisor; and

(b) Not receive credit for completed portions of academy training.

(2) If a trainee is removed from the academy, pursuant to subsection (1) of this section, within thirty (30) days of the removal, he may request in writing an administrative hearing, which shall comply with KRS Chapter 13B.

(3) Agency request. The department shall remove a trainee from the academy upon written request of the trainee's law enforcement agency. The trainee shall not receive credit for completed portions of academy training.

Section 3. Gifts. A gift from trainees to department staff shall conform with ~~the requirements of~~ KRS Chapter 11A, the executive branch code of ethics.

Section 4. Penalties for Misconduct. (1) The following penalties shall apply to a trainee's failure to meet conduct or honor code requirements of the department. The penalties are listed in order of decreasing severity.

(a) Expulsion. The trainee is dismissed from the academy, and all privileges are terminated.

(b) Suspension. The trainee is suspended from the academy for a specified period of time; all privileges are rescinded during the suspension period.

(c) Loss of privileges. The trainee's privileges as specified in the imposed penalty are rescinded for a stated period of time. The trainee's participation in academy activities is not affected.

(d) Written reprimand. The trainee is reprimanded in writing for violating a conduct or honor code requirement.

(e) Verbal warning. The trainee is warned verbally that he has violated a conduct or honor code requirement.

(2) Second and subsequent violations.

(a) If a trainee has received a penalty for violating a conduct or honor code requirement, upon a second violation of any conduct or honor code requirement the next higher penalty shall be added to the list of penalties which may be imposed for the second violation.

(b) If a trainee has previously received two (2) penalties for violating two (2) conduct or honor code requirements, upon a third or subsequent violation of any conduct or honor code requirement the next two (2) higher penalties shall be added to the list of penalties which may be imposed for the third or subsequent violation.

(3) Giving notice of disciplinary action to trainee and trainee's agency. The department shall give written notice to a trainee of any penalty imposed upon him. The trainee's agency shall be given written notice of any penalty imposed upon the trainee except a verbal warning, and shall be given verbal notice ~~if~~ when a trainee has been charged with a violation of a conduct or honor code requirement and has requested a hearing.

(4) Penalty records.

(a) The department shall keep a written record of a penalty imposed on a trainee by placing it in the trainee's file.

(b) Except ~~if~~ where required by law, a trainee's training file shall not be available for access except by:

1. The department;
2. The trainee; or
3. The trainee's agency head.

Section 5. Termination of Dangerous or Disruptive Situation. If the conduct or condition of a trainee constitutes an immediate danger or an immediate threat of danger to self or others, or is disruptive of, or is an immediate threat to be disruptive of a department activity, a department staff member may take all reasonable steps necessary to terminate the situation.

Section 6. Conduct Requirements. A trainee attending the

telecommunications academy shall meet the following conduct requirements:

(1) General conduct - chain of command. All communications shall follow chain of command of the department. Exceptions are the unavailability of a supervisor, or the trainee's complaint regarding a supervisor. Penalty: verbal warning or written reprimand.

(2) General conduct - insubordination. A trainee shall:

(a) Obey a lawful order from a department staff member. Penalty: verbal warning, written reprimand, loss of privileges, or suspension.

(b) Refrain from vulgarity, rudeness, confrontation, or other disrespectful conduct directed toward a department staff member, trainee or other department trainee or guest. Penalty: verbal warning, written reprimand or suspension.

(3) General conduct - grooming.

(a) A male trainee:

1. Shall be clean shaven with sideburns no longer than the bottom of the ear lobe;

2. May wear a mustache if he had it upon arrival and keeps it neatly trimmed; and

3. Shall not wear a beard unless he receives permission from the department, based upon:

a. A written request from the trainee's agency; and

b. A showing of good cause.

(b) A trainee's hair, male or female, shall:

1. Not be unkempt; and

2. Be kept above the collar.

(c) A trainee shall:

1. Practice good hygiene at all times; and

2. Not wear excess perfume, cologne, or other scented body products.

(d) Penalty: verbal warning or written reprimand.

(4) General conduct - alcoholic beverages and other intoxicants.

(a) A trainee shall not possess, consume nor be under the influence of alcoholic beverages, controlled substances, or other intoxicating substances not therapeutically prescribed by a physician or a qualified medical professional while enrolled in a telecommunications academy. Penalty: written reprimand, loss of privileges, suspension or expulsion.

(b) If a trainee has taken a controlled substance as prescribed by a physician or has taken any other medication, whether prescribed or not, he shall not participate in any academy activity if he is under the influence thereof to the extent that the trainee may be impaired or may endanger himself or other persons or property. A trainee shall advise the class coordinator or the section supervisor in writing of the use of controlled substance or medication whether or not it has been prescribed by a physician or a qualified medical professional. Penalty: verbal warning, written reprimand or suspension.

(c) Confiscation.

1. If a dormitory staff member, department instructor, section supervisor, or branch manager observes an unlawfully-possessioned intoxicating substance, he shall immediately confiscate it.

2. A confiscated item shall be stored in a secure facility of the department until the item is returned to the trainee at the completion of the academy, or disposed of by the department.

(5) General conduct - weapons and other dangerous devices.

(a) A trainee shall not possess deadly weapons (as defined in KRS 500.080), ammunition, destructive devices or booby trap devices (as defined in KRS 237.030), hazardous substances (as defined in KRS 224.01-400), fireworks, knives (except an ordinary pocketknife), or instruments used by law enforcement for control purposes (such as batons, stun guns, Mace, and pepper spray) on property used by the department except under circumstances specifically authorized by the department. Penalty: verbal warning, written reprimand, loss of privileges, suspension, or expulsion.

(b) ~~Weapons specifically designated by the department to be used for training purposes shall be stored in a vault provided by the department at all times when they are not being used directly in academy activities and may be removed only for scheduled training, servicing, cleaning, or repair. Servicing, cleaning, and repairs of weapons (other than repairs which may require the expertise of a qualified gunsmith) shall be carried out only as authorized by the~~

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~~section supervisor and only in the presence of a certified firearms instructor. Penalty: verbal warning or written reprimand.~~

~~(e)~~ Confiscation.

1. If a dormitory staff member, department instructor, section supervisor, branch manager, director or commissioner observes an unlawfully-possessed weapon or other dangerous device he shall immediately confiscate it.

2. Confiscated items shall be stored in a safe and secure facility of the department pending appropriate disposition.

(6) General conduct - department property.

(a) A trainee shall not damage, destroy, fail to return, or be wasteful of property of the department or any other facility used by the department. Penalty: verbal warning, written reprimand, loss of privileges, suspension or expulsion.

(b) A trainee shall not have successfully completed the telecommunications academy, and shall not be allowed to graduate until he has returned all issued items or made satisfactory arrangements to pay for unreturned or damaged items.

(7) General conduct - conduct unbecoming a trainee. A trainee shall not:

(a) Engage in criminal activity, including acts which would constitute a felony, misdemeanor or violation, while enrolled in the telecommunications academy. Depending on the nature of the conduct, the trainee shall be penalized by a verbal warning, written reprimand, loss of privileges, suspension or expulsion.

(b) Engage in conduct which creates a danger or risk of danger to the trainee or another, possess obscene material as defined in KRS 531.010, engage in conduct which is unreasonably annoying, engage in fighting or in violent, tumultuous or threatening conduct, engage in sexual harassment or conduct which is patently offensive. Penalty: verbal warning, written reprimand, loss of privileges, or expulsion.

(8) Academy activities - uniforms.

(a) A trainee shall wear the uniform required by Section 1 of this administrative. Penalty: verbal warning or written reprimand.

(b) Uniforms shall be clean, pressed and in good condition. Penalty: verbal warning or written reprimand.

(c) A name tag, provided by the department, shall be worn on the left shirt breast. Penalty: verbal warning or written reprimand.

(d) Sleeves on long-sleeved shirts shall not be rolled up. Penalty: verbal warning or written reprimand.

(e) Additional clothing may be worn during an academy activity if authorized by the instructor.

(9) Academy activities - absences.

(a) A trainee shall be considered absent if he is not physically present in a class or other required department activity for more than ten (10) minutes. A trainee shall be considered tardy if he is not physically present at a class or other required department activity for fewer than ten (10) minutes. A trainee shall give advance notice of an absence if possible. Penalty: verbal warning or written reprimand.

(b) An absence shall be excused if the trainee was absent due to:

1. Illness;
2. Illness of an immediate family member;
3. Death of an immediate family member;
4. Necessity of trainee's agency; or
5. Emergency circumstances.

(c) An absence from the telecommunications academy shall be approved by the section supervisor or branch manager.

~~(d) If a trainee's absence is excused, [trainee is absent, excused or unexcused,] he shall make up for the absence by completing an assignment provided by the instructor who taught the missed unit. Failure to make up the work shall be deemed a failure for that academy area.~~

(10) Academy activities - breaks. Trainees shall be allowed a ten (10) minute break per hour of instruction if possible. A trainee shall not take a break in an area restricted by the department. Penalty: verbal warning or written reprimand.

(11) Academy activities - general conduct.

(a) A trainee shall be attentive during academy activities. Penalty: verbal warning or written reprimand.

(b) A trainee shall not possess any electronic devices during scheduled training hours unless written permission is granted by

the class coordinator. Electronic devices shall include cellular telephones, mp3-type audio players, cameras, and recording devices. Penalty: verbal warning or written reprimand.

(c) A trainee shall not use tobacco products during, or bring food or drink into a academy activity unless so permitted by the training director or commissioner. Penalty: verbal warning or written reprimand.

(d)[(e)] A trainee shall not engage in conduct which creates or may create a risk of injury to others during a training session.

(12) Academy activities - dishonesty. A trainee shall not cheat or attempt to cheat on a test or on any other assignment or activity; or alter or attempt to alter a test grade or other evaluation result; or engage in any other conduct intended to gain an undeserved evaluation for himself or another. Penalty: verbal warning, written reprimand, loss of privileges, suspension or expulsion.

(13) Residence hall.

~~(a) During the telecommunications academy[when attending in Madison County,] a trainee shall reside in the residence hall designated by the department.~~

(b) A trainee shall return to his residence hall at curfew times designated by the commissioner, Sunday through Thursday evenings, and remain there until 5 a.m. the next morning. Exceptions shall be approved by the class coordinator and reported in writing through channels to the director. Penalty: verbal warning, written reprimand, loss of privileges.

(c) A trainee shall observe "lights out" by 11:30 p.m. Sunday through Thursday except on nights prior to an academic test when the time shall be extended to 12 midnight. Penalty: verbal warning or written reprimand.

(d) Each trainee shall be responsible for cleaning his area. Each morning, prior to leaving for class training, a trainee shall ensure his room is clean and free of trash, with beds made and the room ready for inspection. Penalty: verbal warning, written reprimand, loss of privileges.

(e) Doors shall be locked whenever a room is unoccupied. Penalty: verbal warning or written reprimand.

(f) The use of hot plates is prohibited. Penalty: verbal warning, written reprimand, loss of privileges.

(g) All residence hall rooms, closets, and containers therein may be inspected by department staff for purposes of safety, sanitation and rule violations.

(h) A trainee residing at the residence hall shall not:

1. Have any person of the opposite sex in his room without the permission of the department. Penalty: verbal warning, written reprimand, loss of privileges, or suspension.

2. Have a visitor in his room after 9 p.m. Penalty: verbal warning or written reprimand, loss of privileges.

3. Keep pets, ~~or~~ animals, or birds ~~[animals, or birds]~~ of any kind in his room. Penalty: verbal warning, written reprimand, loss of privileges.

4. Engage in dangerous, disruptive, immoral or obscene behavior. Penalty: verbal warning, written reprimand, loss of privileges, or suspension.

Section 7. Honor Code. (1) The trainee shall abide by the provisions of the honor code which reads as follows:

We are a dynamic team of individuals who possess a wide array of talent and strengths. In order for our team to grow and be successful, we will respect the leadership of the agency and follow directives to the best of our ability. We will make sacrifices for the benefit of the team. We will practice humility and show a spirit of compromise. As trainees of the Department of Criminal Justice Training, Telecommunications Academy, we will not lie, steal or cheat nor tolerate any among us who do.

We will keep our private lives honorable as an example to all. We will be exemplary in obeying the laws of the Commonwealth and the administrative regulations of the Department of Criminal Justice Training. Whatever we see or hear of a confidential nature ~~or~~ [of] confided to us in our official capacity shall be kept confidential unless revelation is necessary in the performance of duty. We will never allow personal feelings, prejudices, ill will or friendships to influence our decisions.

We know that each of us is individually responsible for standards of professional performance. Therefore, we will make the utmost effort to improve our level of knowledge and competence.

We recognize the badge of our office as a symbol of public faith and accept it as a public trust to be held so long as we are true to the ethics of public safety~~(the police service)~~. We will constantly strive to achieve these ideals, dedicating ourselves to our chosen profession - public safety~~(law enforcement)~~.

(2) The penalty for violating the honor code shall be: verbal warning, written reprimand, loss of privileges, suspension or expulsion.

(3) The instructional staff~~(class)~~ shall select~~(elect)~~ an honor code representative and a class leader during the first week of the academy.

(4) All trainees shall report honor code violations to the honor code representative who shall report the offense to the class coordinator. The representative shall recommend the penalty to be imposed for the violation.

(5) All disciplinary procedures contained in this administrative regulation shall apply to the honor code violation. The department may pursue separately any additional offenses discovered during the investigation of the honor code violation.

Section 8. Department's Responsibilities to Trainee's Agency. In order to keep the agency advised of the trainee's progress and performance in the telecommunications academy so that the agency may adequately assess the trainee's ability to perform required duties, the department shall provide the following to the police chief, sheriff or chief administrator of the trainee's agency:

(1) Trainee performance report which shall be completed at the completion of the academy~~(four (4) week intervals)~~ and shall include trainee conduct, demonstrated leadership abilities, examination scores, ~~(physical fitness scores)~~ and overall effort on performance, observed social/interpersonal skills, and appearance.

(2) Immediate notice of specific nonperformance, misconduct or lack of progress.

(3) Immediate notice of any off-campus activity which reflects negatively on the profession, including the following:

(a) Parking an agency-owned or assigned~~(a marked police)~~ vehicle ~~(parked)~~ at a:

1. Bar;
2. Tavern;
3. Lounge;
4. Nightclub; or
5. Other establishment with the primary purpose of serving alcoholic beverages;

- (b) Disorderly conduct;
- (c) Speeding; or

(d) Other behavior that gives rise to a citizen's complaint.

Section 9. Summary Discipline. Except for summary discipline, a penalty shall not be imposed upon a trainee unless charges have first been brought by the legal officer.

(1) The following department staff members shall have the authority to impose the specified penalties summarily without meeting the requirements of the formal disciplinary procedures provided by Sections 10 through 15 of this administrative regulation. To have the authority to impose summary discipline, the staff member shall believe by a preponderance of the evidence that the trainee has engaged in the misconduct.

(a) A department instructor may summarily impose a verbal warning.

(b) The section supervisor, branch manager, director, or commissioner may summarily impose a verbal warning, written reprimand, or loss of privileges.

(2) Before imposing a penalty summarily, the staff member shall give the trainee the opportunity to give an explanation.

(3) A summarily imposed penalty shall be reviewed by, and may be rescinded or modified by, the immediate supervisor of the staff member imposing the penalty. The reviewer shall provide the trainee with the opportunity to give an explanation.

Section 10. Removal From the Academy Pending an Initial Appearance Before the Commissioner. (1) ~~If~~~~(When)~~ a request for charges is filed against a trainee, the commissioner or director may remove the trainee from some or all training until the trainee's initial appearance before the commissioner if he has reasonable grounds to believe the alleged misconduct took place and:

(a) He has reasonable suspicion to believe the trainee would be dangerous or disruptive if not removed; or

(b) The trainee may be charged with misconduct serious enough to authorize expulsion.

(2) A trainee who has been removed from the academy pending an initial appearance before the commissioner shall be provided the initial appearance within three (3) training days of the removal.

Section 11. Complaint. Anyone having reasonable grounds for believing that a trainee has violated a conduct or honor code requirement identified in this administrative regulation may file a complaint with the section supervisor. This complaint shall be in writing setting forth the facts upon which the complaint is based.

Section 12. Investigation by Section Supervisor. (1) If the section supervisor receives a complaint of or witnesses apparent misconduct, he shall take statements and otherwise investigate the matter.

(2) After investigating the matter, the section supervisor shall:

(a) Take no action if none is justified by the evidence;

(b) Impose appropriate summary discipline; or

(c) File, with the legal officer, a written request that charges be brought against the trainee. The request for charges shall describe the alleged misconduct and designate the specific conduct requirements violated. All pertinent evidence and documents including the complaint, and statements of the trainee and witnesses shall be forwarded to the legal officer.

Section 13. Review by Legal Officer; Placing Charges. (1) The legal officer shall review the request for charges and the supporting evidence and documents.

(2) The legal officer may make or cause further inquiry into the matter for additional information.

(3) The legal officer shall either:

(a) File any charges against the trainee as he believes are justified by the evidence; or

(b) Deny the request for charges if the evidence does not support any charges. If the legal officer declines to file charges, he shall provide the commissioner with a statement of his reasons for not filing charges.

(4) The charging document shall:

(a) Be in writing;

(b) Particularly describe the alleged misconduct so as to reasonably inform the trainee of the nature of the allegation;

(c) State the time, date and place the trainee shall make an initial appearance before the commissioner to answer the charges.

(d) Be signed by the legal officer; and

(e) Be served upon the trainee at least one (1) hour before his initial appearance before the commissioner.

Section 14. Initial Appearance Before the Commissioner. (1) The initial appearance before the commissioner shall be held no more than three (3) training days after the charges have been served on the trainee. If the trainee, after receiving proper notice, fails to appear, the commissioner may proceed in his absence and the trainee shall be notified in writing of any action taken.

(2) At the initial appearance before the commissioner:

(a) The legal officer shall:

1. Read the charges to the trainee; and

2. Explain to the trainee:

a. The charges;

b. His right to a hearing in accordance with KRS Chapter 13B; and

c. His right to be represented by legal counsel.

(b) The legal officer shall explain to the trainee the possible answers to the charges: admit the charges are true, deny the charges are true but waive a hearing, or deny the charges are true

and ask for a hearing.

(c) The commissioner shall advise the trainee of the penalty which shall be imposed if the trainee admits the charges or waives a hearing.

(d) The trainee shall be requested to answer the charges.

(e) If the trainee chooses to waive his rights and admits the charges or denies the charges but waives a hearing:

1. He shall be permitted to make a statement of explanation; and

2. The commissioner shall impose a penalty.

(f) If the trainee denies the charges and requests a hearing, or refuses to answer the charges, the commissioner shall set a date for the hearing. A notice of administrative hearing as required by KRS 13B.050 shall be served on the trainee within forty-eight (48) hours of the initial appearance before the commissioner.

(3) The commissioner may remove the trainee from some or all training until the hearing if:

(a) He has reasonable grounds to believe the trainee would be dangerous or disruptive if not removed; or

(b) The trainee is charged with misconduct serious enough to authorize expulsion as a possible penalty.

Section 15. Hearing. The hearing shall be conducted in accordance with KRS Chapter 13B.

JOHN W. BIZZACK, Ph.D., Commissioner

APPROVED BY AGENCY: May 14, 2010

FILED WITH LRC: May 14, 2010 at noon

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.

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Criminal Justice Training
(As Amended at ARRS, August 10, 2010)**

503 KAR 3:110. Certified Court Security Officers academy trainee requirements; misconduct; penalties; discipline procedures.

RELATES TO: KRS 15.380(1)(c), 15.3975

STATUTORY AUTHORITY: KRS 15.3975(1), 15A.070(1), (5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.070(1) requires ~~the Commissioner of~~ the Department of Criminal Justice Training to establish, supervise, and coordinate training programs and schools for law enforcement personnel, ~~and~~ KRS 15A.070(5) authorizes the commissioner of the Department of Criminal Justice Training to promulgate administrative regulations. This administrative regulation ~~establishes~~prescribes conduct requirements of trainees attending the Certified Court Security Officers academy conducted by the Department of Criminal Justice Training, ~~prescribes~~ procedures for disciplinary action, and ~~sets~~ penalties for violations of conduct requirements.

Section 1. Uniforms and Criminal History Records Check required. (1) A trainee shall acquire and wear the designated uniform of his or her employing agency while participating in the academy. If an agency has not adopted a uniform, male trainees shall wear a shirt and tie and female trainees shall wear business casual for women. Penalty: verbal warning, written reprimand, loss of privileges, or probation.

(2) A uniform shall be:

(a) Clean, pressed, and in good condition;

(b) Appropriately sized to fit the trainee and not excessively loose, baggy, or tight;

(c) Worn over a clean white or department-issued tee-shirt, visible at the neck; and

(d) Worn with a wide black police-type belt, clean police-type footwear, brown or black socks, and when outdoors, a department cap.

(e) The penalty for violation of this subsection shall be a verbal

warning or written reprimand.

(3) Jewelry.

(a) The trainee may wear one (1) ring per hand. A wedding and engagement ring worn together shall be considered one (1) ring.

(b) Necklaces, earrings, bracelets, and other jewelry shall not be worn unless authorized by the coordinator.

(c) The penalty for violation of this subsection shall be a verbal warning or written reprimand.

(4) A name tag, provided by the department, shall be worn on the left shirt-pocket flap. Penalty: verbal warning or written reprimand.

(5) Sleeves on winter shirts shall not be rolled up outside the classroom. Penalty: verbal warning or written reprimand.

(6) Optional clothing may be worn during a training activity if authorized by the class coordinator or an instructor.

(7) The trainee's employing agency shall submit a letter to the department that:

(a) A criminal history check, in accordance with ~~the requirements of~~ 503 KAR 1:140, Section 4(1)(f) and (2), has been conducted within ninety (90) days before the trainee attends ~~of the trainee attending~~ the Academy for Certified Court Security Officers; and

(b) The trainee is not prohibited by state or federal law from accessing the Criminal Justice Information System (CJIS) or any other restricted records database.

(8) If the criminal history check required by KRS 15.3971(1)(e) and (k) ~~(15.540(1)(c))~~ has been performed within ninety (90) days before the trainee arrives for the academy, an additional criminal records check shall not be required of the employing agency.

Section 2. Removing a Trainee from the Academy. (1) Unqualified trainee. If the Department discovers that a trainee does not meet the Certified Court Security Officer qualifications in KRS 15.3971, he shall:

(a) Be removed from the academy by the:

1. Director;

2. Branch manager; or

3. Section supervisor; and

(b) Not receive credit for completed portions of academy training.

(2) If a trainee is removed from the academy he may request an administrative hearing, conducted in accordance with the requirements of KRS Chapter 13B, within thirty (30) days of the removal. The request for an administrative hearing shall be in writing.

(3) Agency request. The department shall remove a trainee from the academy upon written request of the trainee's law enforcement agency. The trainee shall not receive credit for completed portions of academy training.

Section 3. Gifts. A gift from trainees to department staff shall conform with ~~the requirements of~~ KRS Chapter 11A, the executive branch code of ethics.

Section 4. Penalties for Misconduct. (1) The following penalties shall apply to a trainee's failure to meet conduct or honor code requirements of the department. The penalties are listed in order of decreasing severity.

(a) Expulsion. The trainee is dismissed from the academy, and all privileges are terminated.

(b) Suspension. The trainee is suspended from the academy for a specified period of time; all privileges are rescinded during the suspension period.

(c) Loss of privileges. The trainee's privileges as specified in the imposed penalty are rescinded for a stated period of time. The trainee's participation in academy activities is not affected.

(d) Written reprimand. The trainee is reprimanded in writing for violating a conduct or honor code requirement.

(e) Verbal warning. The trainee is warned verbally that he has violated a conduct or honor code requirement.

(2) Second and subsequent violations.

(a) If a trainee has received a penalty for violating a conduct or honor code requirement, upon a second violation of any conduct or honor code requirement the next higher penalty shall be added to the list of penalties that may be imposed for the second violation.

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(b) If a trainee has previously received two (2) penalties for violating two (2) conduct or honor code requirements, upon a third or subsequent violation of any conduct or honor code requirement the next two (2) higher penalties shall be added to the list of penalties that may be imposed for the third or subsequent violation.

(3) Notice of disciplinary action to trainee and trainee's agency. The department shall give written notice to a trainee of any penalty imposed upon him. The trainee's agency shall be given written notice of any penalty imposed upon the trainee except a verbal warning, and shall be given verbal notice ~~if [when]~~ a trainee has been charged with a violation of a conduct or honor code requirement and has requested a hearing.

(4) Penalty records.

(a) The department shall keep a written record of a penalty imposed on a trainee by placing it in the trainee's file.

(b) Except ~~if [where]~~ required by law, a trainee's training file shall not be available for access except by:

1. The department;
2. The trainee; or
3. The trainee's agency head.

Section 5. Termination of Dangerous or Disruptive Situation. If the conduct or condition of a trainee constitutes an immediate danger or an immediate threat of danger to self or others, or is disruptive of, or is an immediate threat to be disruptive of a department activity, a department staff member may take all reasonable steps necessary to terminate the situation.

Section 6. Conduct Requirements. A trainee attending the academy shall meet the following conduct requirements:

(1) General conduct - chain of command. All communications shall follow the chain of command of the department. Exceptions are the unavailability of a supervisor, or the trainee's complaint regarding a supervisor. Penalty: verbal warning or written reprimand.

(2) General conduct - insubordination. A trainee shall:

(a) Obey a lawful order from a department staff member. Penalty: verbal warning or written reprimand, loss of privileges, probation, or suspension.

(b) Refrain from:

1. Engaging in sexual activity on Department property;
2. Physical contact with another person that is inappropriate in a professional training setting, for example, hugging or kissing;
3. Vulgarity;
4. Sexual harassment;
5. Rudeness;
6. Confrontation; and
7. Other disrespectful conduct directed toward a department staff member, trainee or other department trainee or guest.

8 Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension, or expulsion.

(3) General conduct - grooming.

(a) A male trainee:

1. Shall be clean shaven with sideburns no longer than the bottom of the ear lobe;
2. May wear a mustache if he had it upon arrival and keeps it neatly trimmed; and
3. Shall not wear a beard unless he receives permission from the department, based upon:

- a. A written request from the trainee's agency; and
- b. A showing of good cause.

(b) A trainee's hair shall:

1. Not be unkempt; and
2. Be kept above the collar.

(c) Penalty: verbal warning or written reprimand.

(4) General conduct - alcoholic beverages and other intoxicants.

(a) Regardless of amount, a trainee shall not possess, consume nor be under the influence of alcoholic beverages, controlled substances, or other intoxicating substances not therapeutically prescribed by a physician or a qualified medical professional while attending a basic training course which shall include all dates of training and periods when residing in the dormitory, including the weekend if the trainee is granted permission to stay beyond the

normal Friday evening checkout.

(b) "Attending a basic training course" shall not include the weekend period during which trainees check out of the dormitory and return to their homes.

(c) A trainee shall not report to the dormitory having consumed alcoholic beverages, controlled substances, or other intoxicating substances.

(d) A trainee shall submit to testing as requested by the department to determine the presence of alcoholic beverages, or controlled or other intoxicating substances at the department's expense.

(e) Testing shall not be required to impose a penalty under this subsection, but may be requested if a department or dormitory staff member, instructor, section supervisor, branch manager, director, or commissioner has a reasonable suspicion that the trainee has violated the provisions of this section.

(f) Testing may be randomly requested of all members of an academy class or all dormitory residents. If a test is requested, a trainee shall be considered to have consumed alcoholic beverages if his or her blood alcohol concentration is 0.01 percent or greater.

(g) If a trainee has taken a controlled substance as prescribed by a physician or a qualified medical professional or has taken any other medication, whether prescribed or not, he shall not participate in any academy activity if he is under the influence thereof to the extent that the trainee may be impaired or may endanger himself or other persons or property. A trainee shall advise the class coordinator or the section supervisor in writing of the use of a controlled substance or medication whether or not it has been prescribed by a physician or a qualified medical professional.

(h) **Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension, or expulsion.**

~~(i) Confiscation. [(4) Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension, or expulsion.]~~

1. If a dormitory staff member, department instructor, section supervisor, or branch manager observes an unlawfully-possessioned intoxicating substance, he shall immediately confiscate it.

2. A confiscated item shall be stored in a secure facility of the department until the item is returned to the trainee at the completion of the academy, or disposed of by the department.

(5) General conduct - weapons and other dangerous devices.

(a) Due to the accidents that have occurred in the training setting in other jurisdictions, a trainee shall not possess the following on property used by the department except under circumstances specifically authorized by the department:

1. Deadly weapons as defined in KRS 500.080;
2. Ammunition;
3. Destructive devices as defined in KRS 237.030;
4. Booby trap devices as defined in KRS 237.030;
5. Hazardous substances as defined in KRS 224.01-512;
6. Fireworks; or
7. Instruments used by law enforcement for control purposes, such as batons, stun guns, Mace, and pepper spray.

(b) Weapons specifically designated by the department to be used for training purposes shall be stored in a vault provided by the department at all times when they are not being used directly in academy activities and may be removed only for scheduled training, servicing, cleaning, or repair. Servicing, cleaning, and repairs of weapons (other than repairs that may require the expertise of a qualified gunsmith) shall be carried out only as authorized by the section supervisor and only in the presence of a certified firearms instructor.

(c) Penalty: verbal warning, written reprimand, loss of privileges, or probation.

(d) Confiscation.

1. If a dormitory staff member, department instructor, section supervisor, branch manager, director, or commissioner observes a weapon or other dangerous device possessioned in violation of this subsection, he shall immediately confiscate it.

2. Confiscated items shall be stored in a safe and secure facility of the department pending appropriate disposition.

(6) General conduct - department property.

(a) A trainee shall not damage, destroy, fail to return, or be wasteful of property of the department or any other facility used by the department. Penalty: verbal warning, written reprimand, loss of

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privileges, probation, suspension, or expulsion.

(b) A trainee shall not have successfully completed the academy, and shall not be allowed to graduate until he has returned all issued items or made satisfactory arrangements to pay for unreturned or damaged items.

(7) General conduct - conduct unbecoming a trainee. A trainee shall not:

(a) Engage in criminal activity, including acts which would constitute a felony, misdemeanor, or violation, while enrolled in the academy. ~~[Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension, or expulsion.]~~

(b) Engage in conduct that creates a danger or risk of danger to the trainee or another;

(c) Possess obscene material as defined in KRS 531.010;

(d) Engage in conduct that is annoying;

(e) Engage in fighting or in violent, tumultuous, or threatening conduct;

(f) Engage in sexual harassment; or

(g) Engage in conduct that is offensive.

(h) ~~Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension, or expulsion.~~

(8) Academy activities - absences.

(a) A trainee shall be considered absent if he is not physically present in a class or other required department activity for more than ten (10) minutes. A trainee shall be considered tardy if he is not physically present at a class or other required department activity for fewer than ten (10) minutes. A trainee shall give advance notice of an absence if possible. Penalty for unexcused absence: verbal warning, written reprimand, loss of privileges, probation, or suspension. Penalty for unexcused tardiness: verbal reprimand or written reprimand.

(b) An absence shall be excused if the trainee was absent due to:

1. Illness;
2. Illness of an immediate family member;
3. Death of an immediate family member;
4. Necessity of trainee's agency; or
5. Emergency circumstances.

(c) An absence from the academy shall be approved by the section supervisor or branch manager.

(d) If a trainee is absent, excused or unexcused, he shall make up for the absence by completing an assignment provided by the instructor who taught the missed unit. Failure to make up the work shall be deemed a failure for that academy area.

(e) If a trainee is absent for a combined period of more than ten (10) percent of the academy, he or she may be required to return to a later class in order to complete all coursework.

(9)~~(40)~~ Academy activities - breaks. Trainees shall be allowed a ten (10) minute break per hour of instruction if possible. A trainee shall not take a break in an area restricted by the department. Penalty: verbal warning or written reprimand.

(10)~~(44)~~ Academy activities - general conduct.

(a) A trainee shall be attentive during academy activities. Penalty: verbal warning or written reprimand.

(b) A trainee shall not possess any electronic devices during scheduled training hours unless written permission is granted by the class coordinator. Electronic devices shall include cellular telephones, mp3-type audio players, cameras, and recording devices. Penalty: verbal warning or written reprimand.

(c) A trainee shall not use tobacco products during, or bring food or drink into an academy activity unless so permitted by the training director or commissioner. Penalty: verbal warning or written reprimand.

~~(d)~~~~(e)~~ A trainee shall not engage in conduct that creates or may create a risk of injury to others during a training session. Penalty: probation, suspension, or expulsion.

(11)~~(42)~~ Academy activities - dishonesty. A trainee shall not cheat or attempt to cheat on a test or on any other assignment or activity; or alter or attempt to alter a test grade or other evaluation result; or engage in any other conduct intended to gain an undeserved evaluation for himself or another. Penalty: suspension or expulsion.

(12)~~(43)~~ Residence hall.

(a) During the academy~~, when attending in Madison County,~~

a trainee shall reside in the residence hall designated by the department.

(b) A trainee shall return to his residence hall at curfew times designated by the commissioner, Sunday through Thursday evenings, and remain there until 5 a.m. the next morning. Exceptions shall be approved by the class coordinator and reported in writing through channels to the director. Penalty: verbal warning, written reprimand, loss of privileges, or probation.

(c) A trainee shall observe "lights out" by 11:30 p.m. Sunday through Thursday except on nights prior to an academic test when the time shall be extended to 12 midnight. Penalty: verbal warning or written reprimand.

(d) Each trainee shall be responsible for cleaning his area. Each morning, prior to leaving for class training, a trainee shall ensure his room is clean and free of trash, with beds made and the room ready for inspection. Penalty: verbal warning, written reprimand or loss of privileges.

(e) Doors shall be locked whenever a room is unoccupied. Penalty: verbal warning, written reprimand or loss of privileges.

(f) A hot plate shall not be used in the residence hall. Penalty: verbal warning, written reprimand or loss of privileges.

(g) All residence hall rooms, closets, and containers therein may be inspected by department staff for purposes of safety, sanitation, and rule violations.

(h) A trainee residing at the residence hall shall not:

1. Have any person of the opposite sex in his room without the permission of the department. Penalty: verbal warning, written reprimand, loss of privileges, probation, or suspension.

2. Have a visitor in his room after 9 p.m. Penalty: verbal warning, written reprimand, or loss of privileges.

3. Keep pets, animals, or birds of any kind in his room. Penalty: verbal warning, written reprimand, or loss of privileges.

4. Engage in dangerous, disruptive, immoral or obscene behavior. Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension, or expulsion.

Section 7. Honor Code. ~~[(4)]~~ The trainee shall abide by the provisions of the honor code which reads as follows: We are a dynamic team of individuals who possess a wide array of talent and strengths. In order for our team to grow and be successful, we will respect the leadership of the agency and follow directives to the best of our ability. We will make sacrifices for the benefit of the team. We will practice humility and show a spirit of compromise. As trainees of the Department of Criminal Justice Training, Certified Court Security Officers Academy, we will not lie, steal or cheat nor tolerate any among us who do. We will keep our private lives honorable as an example to all. We will be exemplary in obeying the laws of the Commonwealth and the administrative regulations of the Department of Criminal Justice Training. Whatever we see or hear of a confidential nature or confided to us in our official capacity shall be kept confidential unless revelation is necessary in the performance of duty. We will never allow personal feelings, prejudices, ill will or friendships to influence our decisions. We know that each of us is individually responsible for standards of professional performance. Therefore, we will make the utmost effort to improve our level of knowledge and competence. We recognize the badge of our office as a symbol of public faith and accept it as a public trust to be held so long as we are true to the ethics of the police service. We will constantly strive to achieve these ideals, dedicating ourselves to our chosen profession - law enforcement. Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension, or expulsion.

~~[(2) The class shall elect an honor code representative during the first week of the academy.~~

~~[(3) All trainees shall report honor code violations to the honor code representative who shall report the offense to the class coordinator. The representative shall recommend the penalty to be imposed for the violation.~~

~~[(4) All disciplinary procedures contained in this administrative regulation shall apply to the honor code violation. The department may pursue separately any additional offenses discovered during the investigation of the honor code violation.~~

Section 8. Department's Responsibilities to Trainee's Agency.

In order to keep the agency advised of the trainee's progress and performance in the certified court security officers academy so that the agency may adequately assess the trainee's ability to perform required duties, the department shall provide the following to the sheriff of the trainee's agency:

(1) ~~[A trainee performance report which shall be completed at the end of the first week and shall include trainee conduct, demonstrated leadership abilities, examination scores, and overall effort on performance, observed social/interpersonal skills, and appearance.~~

~~(2)~~ Immediate notice of specific nonperformance, misconduct, or lack of progress.

~~(2)(3)~~ Immediate notice of any off-campus activity that reflects negatively on the profession, including the following:

(a) Parking a marked police vehicle at a:

1. Bar;
2. Tavern;
3. Lounge;
4. Nightclub; or
5. Other establishment with the primary purpose of serving alcoholic beverages;

(b) Disorderly conduct;

(c) Speeding; or

(d) Other behavior that gives rise to a citizen's complaint.

Section 9. Summary Discipline. Except for summary discipline, a penalty shall not be imposed upon a trainee unless charges have first been brought by the legal officer.

(1) The following department staff members shall have the authority to impose the specified penalties summarily without meeting the requirements of the formal disciplinary procedures provided by

Sections 10 through 15 of this administrative regulation. To have the authority to impose summary discipline, the staff member shall believe by a preponderance of the evidence that the trainee has engaged in the misconduct.

(a) A department instructor may summarily impose a verbal warning.

(b) The section supervisor, branch manager, director, or commissioner may summarily impose a verbal warning, written reprimand, or loss of privileges.

(2) Before imposing a penalty summarily, the staff member shall give the trainee the opportunity to give an explanation.

(3) A summarily imposed penalty shall be reviewed by, and may be rescinded or modified by, the immediate supervisor of the staff member imposing the penalty. The reviewer shall provide the trainee with the opportunity to give an explanation.

Section 10. Removal from the Academy Pending an Initial Appearance Before the Commissioner. (1) When a request for charges is filed against a trainee, the commissioner or director may remove the trainee from some or all training until the trainee's initial appearance before the commissioner if he has reasonable grounds to believe the alleged misconduct took place and:

(a) He has reasonable suspicion to believe the trainee would be dangerous or disruptive if not removed; or

(b) The trainee may be charged with misconduct serious enough to authorize expulsion.

(2) A trainee who has been removed from the academy pending an initial appearance before the commissioner shall be provided the initial appearance within three (3) training days of the removal.

Section 11. Complaint. Anyone having reasonable grounds for believing that a trainee has violated a conduct or honor code requirement identified in this administrative regulation may file a complaint with the section supervisor. This complaint shall be in writing setting forth the facts upon which the complaint is based.

Section 12. Investigation by Section Supervisor. (1) If the section supervisor receives a complaint of or witnesses apparent misconduct, he shall take statements and otherwise investigate the matter.

(2) After investigating the matter, the section supervisor shall:

(a) Take no action if none is justified by the evidence;

(b) Impose appropriate summary discipline; or

(c) File, with the legal officer, a written request that charges be brought against the trainee.

1. The request for charges shall describe the alleged misconduct and designate the specific conduct requirements violated.

2. All pertinent evidence and documents including the complaint, and statements of the trainee and witnesses shall be forwarded to the legal officer.

Section 13. Review by Legal Officer; Placing Charges. (1) The legal officer shall review the request for charges and the supporting evidence and documents.

(2) The legal officer may make or cause further inquiry into the matter for additional information.

(3) The legal officer shall either:

(a) File any charges against the trainee that he believes are justified by the evidence; or

(b) Deny the request for charges if the evidence does not support any charges.

(4) If the legal officer declines to file charges, he shall provide the commissioner with a statement of his reasons for not filing charges.

(5) The charging document shall:

(a) Be in writing;

(b) Particularly describe the alleged misconduct so as to reasonably inform the trainee of the nature of the allegation;

(c) State the time, date, and place the trainee shall make an initial appearance before the commissioner to answer the charges.

(d) Be signed by the legal officer; and

(e) Be served upon the trainee at least one (1) hour before his initial appearance before the commissioner.

Section 14. Initial Appearance Before the Commissioner. (1) The initial appearance before the commissioner shall be held no more than three (3) training days after the charges have been served on the trainee. If the trainee, after receiving proper notice, fails to appear, the commissioner may proceed in his absence and the trainee shall be notified in writing of any action taken.

(2) At the initial appearance before the commissioner:

(a) The legal officer shall:

1. Read the charges to the trainee; and

2. Explain to the trainee:

a. The charges;

b. His right to a hearing in accordance with KRS Chapter 13B; and

c. His right to be represented by legal counsel.

(b) The legal officer shall explain to the trainee that he shall answer the charges by:

1. Admitting the charges are true;

2. Denying the charges are true but waiving a hearing; or

3. Denying the charges are true and requesting a hearing.

(c) The commissioner shall advise the trainee of the penalty that shall be imposed if the trainee admits the charges or waives a hearing.

(d) The trainee shall be requested to answer the charges.

(e) If the trainee chooses to waive his rights and admits the charges or denies the charges but waives a hearing:

1. He shall be permitted to make a statement of explanation; and

2. The commissioner shall impose a penalty.

(f) If the trainee denies the charges and requests a hearing, or refuses to answer the charges, the commissioner shall set a date for the hearing, notice of which shall be provided in writing to the trainee.

(3) The commissioner may remove the trainee from some or all training until the hearing if:

(a) He has reasonable grounds to believe the trainee would be dangerous or disruptive if not removed; or

(b) The trainee is charged with misconduct serious enough to authorize expulsion as a possible penalty.

Section 15. Hearing. The hearing shall be conducted in accordance with KRS Chapter 13B.

VOLUME 37, NUMBER 3 – SEPTEMBER 1, 2010

JOHN W. BIZZACK, Ph.D., Commissioner
APPROVED BY AGENCY: May 14, 2010
FILED WITH LRC: May 14, 2010 at noon
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TRANSPORTATION CABINET
Office of Audits
Division of Road Fund Audits
(As Amended at ARRS, August 10, 2010)

**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,
186.050(4), 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 depart-~~
~~ment 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 mem-
ber 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
[2]Procedures Manual.

~~(5) "IRP" means the International Registration Plan.[]~~

(6) "Jurisdiction" means a state of the United States, the Dis-
trict 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 con-
sistent 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.~~

(44) "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)[(45)]~~ "Taxpayer" means a Motor Carrier operating
~~on~~~~[upon]~~ the roads of the Commonwealth subject to ~~the~~~~[these]~~
taxes in KRS 138.660.

Section 2. Governing IFTA Documents. The following IFTA
documents prepared and adopted by the membership of the Inter-
national Fuel Tax Association shall govern the base jurisdic-
tion~~[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]~~ Ma-
nual as incorporated by reference in 601 KAR 1:200~~[revised July~~
~~1998]~~.

Section 3. Tax Recordkeeping. (1) Each taxpayer shall main-
tain 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)~~~~[(45)]~~ of this
section.

(2) Except as ~~established~~~~[set forth]~~ in subsection ~~(13)~~~~[(44)]~~ 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 infor-
mation:

(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. ~~[(f)]~~In the case of a lease agreement, a receipt shall be~~receipts are~~ acceptable in either name, ~~if provided~~ the records and lease agreement ~~firmly~~ indicate the legal connection to the reporting party.~~[(f)]~~

(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.~~[(f)]~~

(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.~~[(f)]~~

(d) Each tax-paid purchase shall be supported by a receipt, invoice, credit card receipt or automated vendor-generated invoice or transaction listing.~~[(f)]~~~~and~~

(e) Over-the-road fuel receipts shall identify the vehicle by the registration plate number or unit number and type of vehicle~~[(f)]~~ 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~~[(f)]~~~~and~~
- (g) Other~~[(f)]~~.

(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~~[(f)]~~~~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 ~~(13)~~~~[(44)]~~ 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 quar-

terly reporting period for a period of five (5) years from the date of filing the tax report based on these records~~[(f)]~~~~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, Section 11 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 un-

der 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, as incorporated by reference in 601 KAR 1:200[~~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 [for ~~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 [for ~~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, to]~~[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 portions 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.

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EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Department of Workforce Investment

Office of Employment and Training

(As Amended at ARRS, August 10, 2010)

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:

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(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)(4) H-2A (1), Employer-Furnished Housing and Facilities;
(i)(9) Migrant and Seasonal Agricultural Worker Protection Act, Housing, Safety and Health Check List;
(j)(4) H-2A Field Audit;
(k)(4) H-2A #2, Housing Inspection;
(l)(4) Kentucky H-2A Alien Labor Certification Program, Customer Satisfaction Survey;
(m)(4) H-2A, #3, Employment Eligibility Verification Certificate;
(n)(4) Kentucky Office of Employment and Training Prevailing Wage Information Request;
(o)(4) Kentucky Office of Employment and Training Transmittal of Application for Alien Employment Certification; and
(p)(4) 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)(4) H-2A (1), "Employer-Furnished Housing and Facilities", rev. 5/02;
(i)(9) "Migrant and Seasonal Agricultural Worker Protection Act, Housing, Safety and Health Check List", rev. 4/04;
(j)(4) H-2A, "Field Audit", rev. 10/04;
(k)(4) Kentucky H-2A #2, "Housing Inspection", rev. 6/02;
(l)(4) Kentucky H-2A, "Alien Labor Certification Program, Customer Satisfaction Survey," rev. 8/07;
(m)(4) H-2A, #3, "Employment Eligibility Verification Certificate" rev. 8/09;
(n)(4) "Kentucky ["]Office of Employment and Training Prevailing Wage Information Request", rev. 12/06;
(o)(4) "Kentucky ["]Office of Employment and Training Transmittal of Application for Alien Employment Certification", rev. 5/2008;
(p)(4) "Kentucky ["]Office of Employment and Training Recruitment Notification", rev. 5/08;
(q)(4) Form 8850, "Pre-Screening Notice and Certification Request for the Work Opportunity Credit", rev. 6/07;
(r)(4) ETA Form 9061, "Individual Characteristics Form Work Opportunity Tax Credit", rev. 12/06;
(s)(4) ETA Form 9063, "Employer Certification Work Opportunity Tax Credit", rev. 12/06;
(t)(4) TAA/TRA-855, "Request for Determination of Entitlement to TAA/TRA", rev. 4/06;
(u)(4) TAA/TRA-855A, "Request for Employment Information", rev. 1/05;
(v)(4) TAA/TRA-858, "Request for Occupational/Remedial Training and Allowances While in Training", rev. 8/05;
(w)(4) TAA-858B, rev. 8/05;
(x)(4) ETA-9042A, "Petition for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA)", rev.

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11/05;

(v)(~~ww~~) "TAA Certification of Training Waiver", rev. 4/07;

(z)(~~xx~~) ATAA-400A, "Verification of Employment", rev. 4/08;

(aa)(~~yy~~) ATAA-301, "Verification of Employment for Monthly Wage Supplement ATAA", rev. 4/08;

(bb)(~~zz~~) 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~~) **Employ Kentucky Operating System (EKOS)**, "Customer Service-Screens 1 through 11", rev. 5/02;

(ff)(~~dd~~) **Employ Kentucky Operating System (EKOS)**, "Customer Detail-Screens 1 through 14", rev. 5/02;

(gg)(~~ee~~) **Employ Kentucky Operating System (EKOS)**, "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.

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LABOR CABINET

Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety
and Health Education and Training
(As Amended at ARRS, August 10, 2010)

803 KAR 2:300. General.

RELATES TO: KRS 338.015~~[339.045]~~, 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 stan-

dard" 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 246].~~

J.R. GRAY, Chairman

APPROVED BY AGENCY: June 2, 2010

FILED WITH LRC: June 4, 2010 at 2 p.m.

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.

LABOR CABINET

Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(As Amended at ARRS, August 10, 2010)

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

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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 administrative 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.

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

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.

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.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(As Amended at ARRS, August 10, 2010)

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~~]

VOLUME 37, NUMBER 3 – SEPTEMBER 1, 2010

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) **"Employee" is defined by KRS 338.015(2).**

(12) **"Employer" is defined by KRS 338.015(1).**

(13) **"Established federal standard" is defined by KRS 338.015(10).**

(14) **"External environment" means any environment external to regulated and nonregulated areas.** [~~"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 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; and[-]

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; and[-]

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,

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~~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.

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.

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Office of Mine Safety and Licensing (As Amended at ARRS, August 10, 2010)

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.

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.

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Office of Mine Safety and Licensing (As Amended at ARRS, August 10, 2010)

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 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, 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; or

(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; or

(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. ~~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 not 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;

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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.

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.

PUBLIC PROTECTION CABINET Department of Housing, Buildings, and Construction Division of Heating, Ventilation and Air Conditioning (As Amended at ARRS.)

815 KAR 8:100. Criteria for local jurisdiction HVAC programs.

RELATES TO: KRS 174.450, 198B.650 - 198B.689~~[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 regulate HVAC inspection and permitting programs upon application. This administrative regulation establishes the requirements for local HVAC inspection and permitting programs~~[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 HVAC~~[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 HVAC~~[heating, ventilation, and air conditioning]~~ journeyman mechanic; or

(b) Have at least six (6) years of experience as a Kentucky licensed master HVAC~~[heating, ventilation, and air conditioning]~~ contractor; or

(c) Be a certified building inspector who has successfully passed the examinations relating to HVAC~~[heating, ventilation, and air conditioning]~~ systems as approved and recognized by the department pursuant to 815 KAR Chapter 8~~[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

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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 established in 815 KAR 8:090~~[approved by the board]~~ for the permitting and inspection functions performed under the provisions of KRS 198B.6671, 198B.6673, and 815 KAR Chapter 8~~[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.

~~(8)(7)~~ Detailed map required. ~~If [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 approval for an HVAC~~[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 HVAC~~[heating, ventilation and air conditioning]~~ journeyman mechanic; or

(b) Have at least six (6) years of experience as a Kentucky licensed master HVAC~~[heating, ventilation and air conditioning]~~ contractor; or

(c) Be a certified building inspector who has successfully passed the examinations relating to HVAC~~[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 (1) year.

(6) Schedule of fees. Each local inspection program shall adhere to the schedule of fees established in 815 KAR 8:090~~[approved by the Board]~~ for the permitting and inspection functions performed under the provisions of KRS 198B.6671, 198B.6673, and 815 KAR Chapter 8~~[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.

~~(8)(7)~~ Detailed map required. ~~If [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, 815 KAR Chapter 7, for all buildings that~~[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, and 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 at least 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 at least five (5) years following receipt of initial complaint.

(4) Status summaries of all complaints shall be submitted to the Division of HVAC by the 10th of the following~~[each]~~ month.

Section 6. HVAC Violations. (1) A local government's HVAC inspection program shall investigate all violations that~~[which]~~ occur within the jurisdiction, ~~it~~ issue stop work orders, ~~it~~ 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 at least 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 at least the statutory period required for retention of public records pursuant to KRS 171.450.

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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, 815 KAR Chapter 7; any terms of their agreement; or KRS Chapter 198B, the department shall, ~~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 KRS Chapter 198B or 815 KAR Chapter 8 ~~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

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, August 10, 2010)

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) Deklite 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 shall not be [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

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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 reviewed 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 CIP1 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) Nuflo Technologies Inc., Nuflo 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 applications.

(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.

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601, phone (502) 573-0394, ext. 144, fax (502) 573-1057.

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Health Policy

(As Amended at ARRS, August 10, 2010)

900 KAR 5:020. State Health Plan for facilities and services.

RELATES TO: KRS 216B.010-216B.130

STATUTORY AUTHORITY: KRS 194A.030, 194A.050(1), 216B.010, 216B.015(27), 216B.040(2)(a)2a

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)2.a requires the cabinet to promulgate an administrative regulation, updated annually, to establish the State Health Plan. The State Health Plan is a critical element of the certificate of need process for which the cabinet is given responsibility in KRS Chapter 216B. This administrative regulation establishes the State Health Plan for facilities and services.

Section 1. The 2010-2012 State Health Plan [~~2009 Update to the 2007-2009 State Health Plan as amended June 9, 2009~~] shall be used to:

(1) Review a certificate of need application pursuant to KRS 216B.040; and

(2) Determine whether a substantial change to a health service has occurred pursuant to KRS 216B.015(28)(a) and

216B.061(1)(d).

Section 2. Incorporation by Reference. (1) The 2010-2012 State Health Plan as amended ~~August (July 15), 2010 [2009 Update to the 2007-2009 State Health Plan as amended June 9, 2009]~~ is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the **Office of Health Policy** ~~[Division of Certificate of Need]~~, 275 East Main Street, fourth floor, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

CARRIE BANAHAN, Executive Director

JANIE MILLER, Secretary

APPROVED BY AGENCY: July 15, 2010

FILED WITH LRC: July 15, 2010 at 10 a.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

**CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy
(As Amended at ARRS, August 10, 2010)**

900 KAR 6:020. Certificate of need application fee schedule.

RELATES TO: KRS 216B.040(3)(c)

STATUTORY AUTHORITY: KRS 216B.040(3)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(3)(c) authorizes the Cabinet for Health and Family Services to establish, by administrative regulation, reasonable application fees for certificates of need. This administrative regulation establishes the fee schedule for certificate of need applications.

Section 1. (1) Certificate of need applications which are submitted by an existing licensed healthcare facility or service that has met the emergency circumstances provision as provided in 900 KAR 6:080 and has received notice from the Office of Health Policy that an emergency exists, shall be assessed an application fee of \$100.

(2) Certificate of need applications not proposing a capital expenditure or proposing a capital expenditure of up to \$200,000 shall be assessed an application fee of \$1,000.

(3)(2) Certificate of need applications which propose a capital expenditure greater than \$200,000 up to \$5,000,000 shall be assessed an application fee of five-tenths (.5) percent of the capital expenditure and shall be computed to the nearest dollar.

(4)(3) Certificate of need applications which propose a capital expenditure greater than \$5,000,000 shall be assessed an application fee of \$25,000.

(5) Certificate of need applications which propose to expand their existing diagnostic cardiac catheterization service to also provide primary (i.e. emergency) Percutaneous Coronary Intervention (PCI) services on a two (2) year trial basis or to provide comprehensive (diagnostic and therapeutic) cardiac catheterization services on a two (2) year trial basis shall be assessed an additional application fee of \$10,000.

Section 2. (1) Application fees shall be submitted with the application.

(2) Applications shall not be deemed complete until the application fee has been paid.

(3) Except as provided in subsection (4) of this section, application fees shall be refunded only if notice of withdrawal of the application is received by the cabinet within five (5) working days of the date the application is received by the Cabinet for Health and Family Services.

(4) Application fees submitted pursuant to Section 1(5) of this administrative regulation shall be refunded if:

(a) The certificate of need application is denied; and

(b) All administrative remedies provided for in KRS 216B.085 are exhausted.

This is to certify that the Executive Director of the Office of Health Policy has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 156.070(4).

CARRIE BANAHAN, Executive Director

JANIE MILLER, Secretary

APPROVED BY AGENCY: April 15, 2010

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

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Aging and Independent Living
Division of Quality Living
(As Amended at ARRS, August 10, 2010)**

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

RELATES TO: KRS Chapter 13B, 17.165(1), (2), 194A.060(1), 194A.700-729, 209.030, 216.300(1), 216.595, 216.789, 216.793, 2010 Ky Acts Ch. 36

STATUTORY AUTHORITY: KRS 194A.050(1), 194A.707(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 94A.050(1) requires the Cabinet of Health and Family Services to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth. KRS 194A.707(1) requires the cabinet to promulgate an administrative regulation establishing an initial and annual certification review process for assisted-living communities that shall include an on-site visit and procedures related to applying for, reviewing, and approving, denying, or revoking certification, as well as the conduct of hearings upon appeals as governed by KRS Chapter 13B. This administrative regulation establishes the certification process for assisted-living communities.

Section 1. Definitions. (1) "Activities of daily living" is defined by KRS 194A.700(1).

(2) "Applicant" means the owner or manager who represents a business seeking initial or annual certification as an assisted-living community. ~~[(2) "Activities of daily living" is defined by KRS 194A.700(1).]~~

(3) "Assisted-living community" is defined by KRS 194A.700(4) ~~[(3)].~~

(4) "Certification review" means the process of reviewing applications and issuing certification for an assisted-living community.

(5) "Client", "Resident", or "tenant" is defined by KRS 194A.700(5) ~~[(4)]. [(5) "Certification review" means the process of reviewing applications and issuing certification for an assisted-living community.]~~

(6) "Client's designated representative" means a person identified in a document signed and dated by the client, ~~or~~ client's guardian, or attorney-in-fact identifying a representative authorized to prepare or direct medication pursuant to KRS 194A.700(3).

(7) "Danger" is defined by KRS 194A.700(6) ~~[(5)].~~

(8) ~~[(7)]~~ "Functional needs assessment" means the client data required by KRS 194A.705(5)(a) and (b).

~~[(9)] 194A.713(1)(a) to be in a lease agreement.~~

~~[(8)]~~ "Instrumental activities of daily living" is defined by 194A.700(7).

(10) "Licensed healthcare professional" is defined by KRS 216.300(1).

(11) "Living unit" is defined by KRS 194A.700(10).

(12) "Plan of correction" is defined by KRS 194A.700(12).

(13) "Statement of danger" is defined by KRS 194A.700(13).

(14) "Statement of noncompliance" is defined by KRS 194A.700(14).

~~[(15)] [(9)] "Living unit" is defined by KRS 194A.700(8).~~

~~[(40)] "Temporary [health] condition" means a condition that~~

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affects a client ~~as follows; and for which health services are being provided as referred to in KRS 194A.711; and~~

(a) The client loses mobility either before or after entering a lease agreement with the assisted-living community but is expected to regain mobility within six (6) months of loss of ambulation or mobile nonambulation; is documented by a licensed healthcare professional who is not the owner, manager, or employee of the assisted-living community; and the assisted-living community has a written plan in place to ensure that the client is not a danger; or

~~(b) 1. The client loses mobility after entering a lease agreement;~~

~~2. The client~~and~~ is not expected to regain mobility;~~

~~3. Hospice or similar end-of-life services are provided in accordance with KRS 194A.705(2) documented by hospice or a licensed health care professional; and~~

~~4. The assisted-living community has a written plan in place to ensure that the client is not a danger~~recover and the provided health services are hospice or similar end-of-life services~~].~~

Section 2. Application for Initial Certification Review. (1) For initial certification an applicant shall, ~~within~~ at least sixty (60) days prior to a planned opening, file with the department:

(a) A completed DAIL-ALC-1, Assisted-Living Community Certification Application;

(b) A copy of a blank lease agreement and any documentation incorporated by reference into the lease agreement;

(c) A copy of written material used to market the proposed assisted-living community, including material that markets offered special programming, staffing, or training in accordance with KRS 194A.713(11)~~194A.715(1)(e)~~;

(d) The floor plan of the proposed assisted-living community identifying the:

1. Living units, including features that meet the requirements of KRS 194A.703(1);

2. Central dining area;

3. Laundry facility; and

4. Central living room; and

(e) A nonrefundable certification fee:

1. Assessed by the department in accordance with KRS 194A.707(8)~~(6)~~;

2. Made payable to the Kentucky State Treasurer; and

3. Mailed to the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621.

(2) If an initial certification becomes effective on a date other than July 1, the certification fee shall be prorated by:

(a) Calculating the fee for a year by computing twenty (20) dollars per living unit or the \$300 minimum set forth in KRS 194A.707(8)~~(6)~~, whichever is greater, but no more than the \$1,600 maximum set forth in KRS 194A.707(8)~~(6)~~;

(b) Dividing the yearly fee by twelve (12) to obtain a monthly fee; and

(c) Multiplying the monthly fee by the number of months remaining until the annual renewal on July 1.

Section 3. Application for Annual Certification Review. (1) The department shall renew a certification if an assisted-living community:

(a) Has obtained its initial certification in accordance with Section 5 of this administrative regulation; and

(b) Submits to the department annually by July 1:

1. A completed DAIL-ALC-1, Assisted-Living Community Certification Application;

2. The documentation required by Section 2(1)(a) through (d) of this administrative regulation, if changes have occurred since the previous certification; and

3. The nonrefundable certification fee required by Section 2(1)(e) of this administrative regulation.

(2) If an annual certification is due after the effective date of this administrative regulation and before or after the required annual certification date, the certification fee shall be prorated as specified in Section 2(2)(a),(b),and (c) of this administrative regulation.

Section 4. Change in an Assisted-Living Community. (1) If there is an increase in the number of living units, an assisted-living

community shall reapply for certification with the department:

(a) In accordance with Section 2(1) of this administrative regulation; and

(b) Not less than sixty (60) days prior to the increase.

(2) If the increase in units occurs before or after the required annual certification date, the certification fee shall be twenty (20) dollars per each additional unit prorated in accordance with Section 2(2) of this administrative regulation.

(3) If there is a decrease in the number of living units, an assisted-living community shall notify the department within sixty (60) days of the decrease.

(4) If there is a change of more than fifty (50) percent interest in ownership of an assisted-living community, the new owner shall apply for certification:

(a) By following the procedures in Section 3 of this administrative regulation; and

(b) Within thirty (30) days of the change of owners.

(5) An assisted-living community shall:

(a) Notify the department in writing:

1. Within thirty (30) days of a name or mailing address change for the assisted-living community or the applicant; or

2. At least sixty (60) days prior to termination of operation; and

(b) Notify a client of termination of operation sixty (60) days prior to closure unless there is sudden termination due to:

1. Fire;

2. Natural disaster; or

3. Closure by a local, state, or federal agency.

Section 5. Initial Certification of an Assisted-Living Community. If department staff determines that an applicant for initial certification meets the application requirements specified in Section 2(1) of this administrative regulation, the department shall:

(1) Consider the application process complete;

(2) Notify the applicant of operation status within ten (10) business days of receipt of the completed DAIL-ALC-1, Assisted-Living Community Certification Application; and

(3) Conduct an announced on-site review.

Section 6. Annual Certification of an Assisted-Living Community. If department staff determines that an applicant for annual certification meets the application requirements specified in Section 3(1) of this administrative regulation, the department shall:

(1) Consider the application process complete; and

(2) Conduct an~~announced or~~ unannounced on-site review pursuant to KRS 194A.707(2)(b) or (c)~~within one (1) year of receipt of the DAIL-ALC-1, Assisted-Living Community Certification Application~~].

Section 7. On-Site Review of an Assisted-Living Community. (1)(a) A representative of the department conducting a certification review shall not disclose information made confidential by KRS 194A.060(1).

(b) A confidential interview with a client or access to a client's living unit shall be subject to the client's oral or written consent.

(2) The on-site review shall consist of:

(a) Review of staffing pursuant to KRS 194A.717(1);

(b) Review of employment records including:

1. An employment application that shall contain a criminal record check notice pursuant to KRS 216.793(1);

2. A criminal records check that shall be:

a. Requested in accordance with KRS 216.789(3); and

b. Applied for within seven (7) days from the date of an employee's hire;

3. Verification that an employee reads and agrees to the policy and procedures of the assisted-living community regarding communicable disease pursuant to KRS 194A.717(4); and

4. Documentation of:

a. Completion of employee orientation;

(i) Pursuant to KRS 194A.719(1); and

(ii) Within ninety (90) days of the date of hire; and

b. Annual in-service education pursuant to KRS 194.719(2);

(c) [

(i) Pursuant to KRS 194A.719; and

(ii) Provided on an annual basis;

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~~(b)~~ Verification of compliance with the applicable building and life safety codes in accordance with KRS 194A.703(3);

~~(d)~~~~(e)~~ Review of client records including:

1. A completed client functional needs assessment;

a. To ensure that the client met the eligibility requirements for assisted-living pursuant to KRS 194A.705(5); and

b. In which a copy was provided to the client upon move in pursuant to KRS 194A.705(5)(a) ~~[194A.711 prior to finalizing a lease agreement];~~

2. An initial and at least annual ~~[A]~~ functional needs assessment;

a. That reflects a client's ~~[ongoing]~~ ability pursuant to KRS 194A.705(5) ~~[194A.711]~~ to perform activities of daily living and instrumental activities of daily living; and

b. In which a copy was provided to the client after move in pursuant to KRS 194A.705(5)(b);

3. Current personal preferences and social factors; ~~[and]~~

4. A signed lease with all attachments;

5. Documentation of a client's designated representative, if applicable; and

6. Documentation that the client received a copy of the assisted-living community's cardiopulmonary resuscitation policies pursuant to KRS 194A.719(1)(d);

~~(e)~~~~(f)~~ Review of an assisted-living community's policies and procedures for compliance with KRS 194A.700 through 194A.729 using a DAIL-ALC-2, Assisted-Living Community Certification Checklist;

~~(f)~~~~(g)~~ Review of an assisted-living community's written service provision and practices related to:

1. Provisions of KRS 194A.705 which, in the case of medications not preset in a medication organizer or single dose unit container as described in KRS 194A.700(3)(a), may include but not exceed the following staff actions if the client requests assistance:

a. Providing the client with a medication reminder;

b. Reading the medication's label to the client, and confirming that the medication is being taken by the client for whom it is prescribed; and

c. Opening the medication container or dosage package, but not handling or removing the medication;

2. Health services, delivered by assisted-living staff, which shall be reported in compliance with KRS 194A.709(1);

3. Documentation in a client's file:

a. From a licensed health care professional defined by KRS 216.300(1) or entity providing the health service ~~[pursuant to KRS 194A.711];~~

(i) Requested of the client by the assisted-living community; and

(ii) That states the client has a temporary ~~[health]~~ condition pursuant to KRS 194A.711(1); and

b. From the assisted-living community to ensure that the client is not a danger, including if hospice or similar end-of-life services are provided; and

4. Compliance with KRS 194A.713(11), ~~[194A.715(1)(c)]~~ 194A.719(1)(i) ~~(10)~~, and 216.595 regarding special programming, staffing, or training that may be provided to a client of an assisted-living community provided the assisted-living community:

a. Ensures a client's functional needs assessment that:

(i) Reflects the client's ~~[ongoing]~~ abilities as specified in paragraph ~~(d)~~~~(e)~~2 of this subsection; and

(ii) Shall be updated at least annually; and

b. Complies with the requirements of KRS 216.595; and

~~(g)~~~~(h)~~ Review of any documentation or records to ensure compliance pursuant to KRS 194A.707(10) ~~(7)~~.

(3) The department may, pursuant to KRS 194A.707(10) ~~(7)~~, request additional information to ensure an assisted-living community complies with KRS 194A.700-729 and 216.789(1).

(4) Prior to completion of the on-site visit at the assisted-living community, a department representative shall hold a meeting with the assisted-living community manager or designee to discuss the preliminary results of the on-site visit.

Section 8. Assisted-living On-Site Review Findings. (1) The department shall:

(a) Document any noncompliance with KRS 194A.700 through

194A.729 or this administrative regulation found during an on-site review on the DAIL-ALC-2, Assisted-Living Community Certification Checklist; and

(b) Submit the finding of noncompliance to the applicant:

1. On a statement of noncompliance located on the DAIL-ALC-3, Statement of Non-compliance and Plan of Correction; and

2. Unless the finding is due to a client being a danger pursuant to subsection (9) of this section, within fifteen (15) business days upon completion of the on-site review.

(2)(a) The assisted-living community shall complete a plan of correction on the DAIL-ALC-3, Statement of Non-compliance and Plan of Correction and submit the form to the department within fifteen (15) business days of receipt of the notice of noncompliance.

(b) The assisted-living community shall specify in the plan the dates by which the noncompliance shall be corrected.

(3) The department shall notify the applicant in writing within fifteen (15) business days of receipt of the plan of correction:

(a) Whether the plan of correction is approved or not approved; and

(b) The reasons for the department's decision.

(4)(a) If the plan of correction is approved and the department determines a follow-up on-site review is unnecessary, the department shall issue a certification certificate.

(b) The assisted-living community shall post the certificate in a public area.

(5) If the plan of correction is not approved, the applicant shall submit to the department an amended plan of correction within fifteen (15) business days of receipt of notice the plan was not approved.

(6) If the department determines after reviewing the amended plan of correction that certification may be denied or revoked, the department shall notify the assisted-living community within ten (10) business days of the determination and with the:

(a) Opportunity for an informal dispute resolution meeting:

1. Between the **department and the assisted-living community**;

~~a. Department; and~~

~~b. The assisted-living community;~~

2. To be held within fifteen (15) days of the assisted-living community's receipt of the notice; and

3. To address a dispute, including the provision of additional documentation or support materials; and

(b) Appeal rights as specified in Section 11 of this administrative regulation if:

1. An informal dispute is not requested; or

2. A dispute is not resolved with the informal dispute resolution.

(7) If an applicant meets all the requirements on the DAIL-ALC-2, Assisted-Living Community Certification Checklist, the department shall issue a certification certificate verifying its status.

(8) The assisted-living community shall post the certification certificate in a public area.

(9) If the department finds during a complaint or certification review that a client is a danger, the department shall:

(a) Immediately notify the assisted-living community as established in Section 7(4) of this administrative regulation; and

(b) Provide the DAIL-ALC-4, Statement of Danger to the assisted-living community.

(10) Within forty eight (48) hours, unless issued on a Friday and then by 4:30 p.m. eastern standard time of the next business day, of receiving the DAIL-ALC-4, Statement of Danger, the assisted-living community shall begin to implement a plan to correct the danger in accordance with Section 9(2)(e)1 or 2 of this administrative regulation.

(11) The department shall make a report of suspected abuse, neglect, or exploitation to Adult Protective Services in accordance with KRS 209.030(3).

(12) The department may conduct additional on-site visits pursuant to KRS 194A.707(10) ~~(7)~~.

Section 9. Denial and Revocation of Certification. (1) Certification shall be denied or revoked if:

(a)1. The department determines upon a complaint or certification review that an assisted-living community knowingly employs

any individual convicted of an offense prohibited by KRS 216.789(1) or 216.789(2) as disclosed by the individual's employment application or a criminal records check and if the assisted-living community fails to immediately terminate the employment upon the department's finding; or

2. The same repeat violation of subparagraph 1 of this paragraph is found by the department within a three (3) year period; or

(b) An assisted-living community or applicant fails to submit a plan of correction to the department as specified in Section 8(2) through (7) of this administrative regulation.

(2) Certification may be denied or revoked if an assisted-living community:

(a) Fails to apply for certification as specified in Sections 2(1), 3(1), or 4(1) of this administrative regulation;

(b) Submits a completed DAIL-ALC-1, Assisted-Living Community Certification Application more than fifteen (15) days late for two (2) consecutive years;

(c) Fails to submit a completed DAIL-ALC-1, Assisted-Living Community Certification Application within thirty (30) days of July 1 annually;

(d) Fails to implement its most recent approved plan of correction:

1. Under current ownership; and

2. Within the plan of correction's specified timeframe on the DAIL-ALC-3, Assisted-Living Community Statement of Noncompliance and Plan of Correction;

(e) Fails to comply with one (1) of the following requirements if the department finds that a client is a danger and the department initially verifies those findings in writing pursuant to Section 8(9) of this administrative regulation:

1. Within forty eight (48) hours, unless issued on a Friday and then by 4:30 p.m. eastern standard time of the next business day, of receiving the DAIL-ALC-4, Statement of Danger, the assisted-living community shall submit a written response to the department that confirms how the danger has been eliminated or why the danger is disputed, with submission occurring via:

- a. Email;
- b. Facsimile transmission;
- c. Delivery to the department by hand;
- d. United States mail; or
- e. Courier service; or

2. Within forty eight (48), unless issued on a Friday and then by 4:30 p.m. eastern standard time of the next business day, of receiving the DAIL-ALC-4, Statement of Danger, the assisted-living community shall:

a. Initiate a move-out notice and begin the process of assisting the client to find appropriate living arrangements pursuant to KRS 194A.705(4); and

b. Submit a written response to the department that confirms the assisted-living community took the required action, with submission occurring via:

- (i) Email;
- (ii) Facsimile transmission;
- (iii) Delivery to the department by hand;
- (iv) United States mail; or
- (v) Courier service; or

(f) Except as provided in subsection (3) of this section, fails to initiate the requirements of paragraph (e)2 of this subsection, if the department:

1. Notifies the assisted-living community in writing that the client remains a danger; and

2. Does not accept the assisted-living community's written response pursuant to paragraph (e)1 of this subsection.

(3) If, after reviewing the assisted-living community's written response pursuant to subsection (2)(e)1 of this section, the department determines the client remains a danger, the department shall notify the assisted-living community in writing that:

(a) Certification may be denied or revoked;

(b) The assisted-living community has the right to an informal dispute resolution meeting:

1. Between the department and the assisted-living community;

2. For the purpose of attempting to resolve a dispute, including the provision of additional documentation or support materials; and

3. To be requested by the assisted-living community in writing

within three (3) business days of receiving the department's written notice; and

(c) It has appeal rights pursuant to Section 11 of this administrative regulation if:

1. An informal dispute resolution meeting is not requested; or

2. A dispute is not resolved with the informal dispute resolution meeting.

(4) The department shall issue a written notice to the assisted-living community if the department determines:

(a)1. A danger is unsubstantiated; or

2. The danger has been eliminated; or

(b) To deny or revoke certification following an informal dispute resolution meeting pursuant to subsection (3)(b) of this section.

(5)(a) If an assisted-living community continues to operate after its certification is revoked and fails to request an informal dispute resolution meeting or an administrative hearing pursuant to Section 11 of this administrative regulation to resolve a danger dispute, the assisted-living community may be fined in accordance with KRS 194A.723(1).

(b) The fine shall be paid as specified in Section 10(1) of this administrative regulation.

Section 10. Collection of Fees and Fines. (1) An entity or business found to be in violation of KRS 194A.723 and pursuant to KRS 194A.724 assessed a penalty shall make a check payable to the Kentucky State Treasurer and mail it to the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621.

(2) A party aggrieved by a determination of the department may appeal the determination or the fine in accordance with KRS Chapter 13B.

(3) The fee established for the notification of conditional compliance to a lender after review of the architectural drawings and lease agreement, pursuant to KRS 194A.729, shall be \$250.

Section 11. Right to Appeal Decision and Hearings. (1) If the department determines that a certification shall be denied or revoked, the applicant shall be notified of the right to appeal the termination:

(a) By certified mail; and

(b) Within ten (10) days of determination.

(2) To request an administrative hearing, an applicant shall send a written request to the department within thirty (30) days of receipt of a written notice of:

(a) Nonapproval of the amended plan of correction; or

(b) Denial or revocation of certification.

(3) After receipt of the request for a hearing, the cabinet shall conduct a hearing pursuant to KRS Chapter 13B.

(4) The denial or revocation of certification shall be effective upon the final decision of the secretary pursuant to KRS Chapter 13B.

(5) If the denial or revocation is upheld by the secretary, the assisted-living community shall cease to operate and the assisted-living community shall:

(a) Assist clients in locating alternate living arrangements pursuant to KRS 194A.705(4); and

(b) Ensure that all clients are relocated within thirty (30) days of final notice of revocation or denial.

(6) The commissioner of the department shall have the authority to extend the time limit specified in subsection (5)(b) of this section, not to exceed an additional fifteen (15) days.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DAIL-ALC-1, Assisted-Living Community Certification Application", edition 7/10[44/07];

(b) "DAIL-ALC-2, Assisted-Living Community Certification Check List", edition 7/10[24/09];

(c) "DAIL-ALC-3, Assisted-Living Community Statement of Noncompliance and Plan of Correction", edition 2/09; and

(d) "DAIL-ALC-4, Statement of Danger", edition 2/09.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky

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40621, Monday through Friday, 8 a.m. to 4:30 p.m.

DEBORAH S. ANDERSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: July 7, 2010

FILED WITH LRC: July 8, 2010, at 11 a.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275
East Main Street 5W-B, Frankfort, Kentucky 40621, phone (502)
564-7905, fax (502) 564-7573.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

OFFICE OF THE ATTORNEY GENERAL
Consumer Protection Division
(Amended After Comments)

40 KAR 2:350. Debt adjusters.

RELATES TO: KRS 380.010, 380.030, 380.040, 380.050, 380.060, 380.070, 380.080, 380.090, 380.100, 380.110, 380.120, 380.130, 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 Ken-

tucky Secretary of State or other evidence of authority to transact business in the Commonwealth of Kentucky and describing ~~this[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 ~~these[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

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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 administrative 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[2006];~~and~~

(b) The "Commonwealth of Kentucky Debt Adjuster Audit Checklist", Form DA-2, July 2010[2006];~~and~~

(c) The "Commonwealth of Kentucky Debt Adjuster Bond", Form DA-3, July 2010; ~~and~~;

(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: August 11, 2010

FILED WITH LRC: August 13, 2010 at 11 a.m.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kevin R. Winstead

(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 House Bill 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 House Bill 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 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 KRS 380.060, privacy and information security regarding consumer's personal information KRS 380.070, 380.080 and 380.090, and requirements and limitations on contracts (KRS 380.10). 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 House Bill 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 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.

(b) The necessity of the amendment to this administrative regulation: This regulation is necessary for the efficient and uniform application of the requirements of House Bill 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 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 KRS 380.060, privacy and information security regarding consumer's personal information KRS 380.070, 380.080 and 380.090 and requirements and limitations on contracts KRS 380.100. 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 House Bill 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 House Bill 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 House Bill 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 House Bill 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 \$250.00 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 registra-

tion requirements of the statutes apply uniformly to any person that engages in debt adjusting.

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 (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 Fish and Wildlife Resources (Amended After Comments)

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. [450.025(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) "Asian carp" means bighead carp, silver carp, black carp, and grass carp.

(3)[(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.

(4)[(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.

(5)[(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.

(6)[(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.

(7)[(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.

(8)[(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 the underwater spearing of fish shall be completely~~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:

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(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; or[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) **except there shall not be a creel limit on Asian Carp;**

(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) **except there shall not be a creel limit on Asian Carp;** 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 gilled or snagged paddlefish.

(13) All snagged fish in the Tennessee River below Kentucky Lake Dam shall be immediately retained, and not released or culled, **except for Asian carp, shad, or herring.**

(14) All gilled or snagged rough fish in the Cumberland River below Barkley Lake Dam shall be immediately retained, and not released or culled, except for **Asian carp, 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; or[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

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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. Giggling and Snagging. (1) Season and methods of giggling and snagging.

(a) Giggling 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 giggling shall be permitted from a boat in any lake with a surface

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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 giggered 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 giggered 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 giggered 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: August 10, 2010

FILED WITH LRC: August 12, 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. 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, KRS 150.440, and KRS 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 non-traditional 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. It will also allow unlimited harvest and culling of Asian carp.

(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 high numbers. 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. It is also necessary to promote unlimited harvest of Asian carp that are posing threats to Kentucky's endemic fish species.

(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. Anglers harvesting larger numbers of Asian carp will help control the overabundant species.

(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:

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division for Air Quality (Amended After Comments)

401 KAR 59:015. New indirect heat exchangers.

RELATES TO: KRS 224.10[224.10-100, ~~EO 2009-538~~, 40 C.F.R. Part 60, Appendices A and B [EO 2008-507, 2008-531, 40 C.F.R. Part 60]

STATUTORY AUTHORITY: KRS 224.10-100(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) ~~requires~~[authorizes] the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. ~~[EO 2009-538, effective June 12, 2009, establishes the Energy and Environment Cabinet][EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet].~~ This administrative regulation provides for the control of emissions from new indirect heat exchangers.

Section 1. Definitions. (1) "Affected facility" means an indirect heat exchanger having a heat input capacity greater than one (1) million BTU per hour (MMBTU/hr)[~~"Indirect heat exchanger" or "IHE" means a piece of equipment, apparatus, or contrivance used for the combustion of fuel in which the energy produced is transferred to its point of usage through a fluid medium that does not come in contact with or add to the products of combustion.~~]

(2) "CEMS" means continuous emissions monitoring system.

(3) "Classification date" means:

(a) August 17, 1971, for an affected facility[~~affected facilities~~][~~indirect heat exchangers~~] with a capacity greater than 250 (MMBTU/hr)[~~million BTU per hour~~] heat input;

1. For particulate emissions;

2. For sulfur dioxide emissions; and

3. For particulate emissions, sulfur dioxide emissions, or nitrogen oxide emissions if fuels other than lignite are burned;

(b) April 9, 1972, for an affected facility[~~affected facilities~~][~~indirect heat exchangers~~] with a capacity of 250 MMBTU/hr[~~million BTU per hour~~] heat input or less for particulate emissions and sulfur dioxide emissions; and

(c) December 22, 1976, for an affected facility[~~affected facilities~~][~~indirect heat exchangers~~] with a capacity greater than 250 MMBTU/hr[~~million BTU per hour~~] heat input for nitrogen oxides if

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lignite fuel is burned.

(4) "COMS" means continuous monitoring system for opacity.

(5) "Indirect heat exchanger" means a piece of equipment, apparatus, or contrivance used for the combustion of fuel in which the energy produced is transferred to its point of usage through a medium that does not come in contact with or add to the products of combustion.

(6) "PM CEMS" means a particulate matter continuous emissions monitoring system.

Section 2. Applicability. (1) This administrative regulation shall apply to ~~affected facilities~~~~indirect heat exchangers having a heat input capacity greater than one (1) million BTU per hour~~ commenced on or after the applicable classification date.

(2) ~~An affected facility~~~~Affected facilities~~~~[Units]~~ subject to 40 C.F.R. 60.40 to 60.46 (Subpart D); 60.40Da to 60.52Da (Subpart Da); 60.40b to 60.49b (Subpart Db); or 60.40c to 60.48c (Subpart Dc) shall be exempt from this administrative regulation for each pollutant covered under this administrative regulation with a specific emission standard in the applicable New Source Performance Standard (NSPS) codified at 40 C.F.R. Part 60.

Section 3. Method for Determining Allowable Emission Rates.

(1) Except as provided in subsection (3) of this section, the total rated heat input capacity of all ~~affected facilities~~~~IHEs located~~ at a source, including those for which an application to construct, modify, or reconstruct has been submitted to the cabinet, shall be used as specified in Sections 4 and 5 of this administrative regulation to determine the allowable emission rate in terms of pounds per million BTU (~~lb/MMBTU~~)~~[lbs per million BTU]~~ heat input.

(2) The permitted allowable emissions rate of an ~~affected facility~~~~indirect heat exchanger~~ shall not be changed due to inclusion or shutdown of another ~~affected facility~~~~heat exchanger~~ at the source.

(3) Sources may petition the cabinet to approve an allowable emission rate apportioned independently from ~~individual~~ heat input pursuant to this subsection, as follows:

(a) The following equation shall be used to determine the allowable emissions rate: $F = (AB + DE) / C$, in which~~[if the conditions specified in this subsection are met]~~.

(a) The allowable emission rate shall be determined according to the following equation: $F = (AB + DE) / C$ in which:

1. A = allowable emission rate (in ~~lb/MMBTU~~) heat input~~[lbs per million BTU heat input as]~~ determined pursuant to subsection (1) of this section[];

2. B = total rated heat input (in ~~MMBTU/hr~~) of all ~~affected facilities~~~~[millions of BTU per hour] of all indirect heat exchangers~~ at the source commenced on or after the applicable classification date, including those for which an application to construct, modify, or reconstruct has been submitted to the cabinet;

3. C = total rated heat input (in ~~MMBTU/hr~~ of all ~~affected facilities~~~~[millions of BTU per hour] of all indirect heat exchangers~~ at the source, including those for which an application to construct, modify, or reconstruct has been submitted to the cabinet;

4. D = allowable emission rate (in ~~lb/MMBTU heat input~~)~~[lbs per million BTU input as]~~ determined pursuant to 401 KAR 61:015, Section 3(1);

5. E = total rated heat input (in ~~MMBTU/hr~~) of all ~~affected facilities~~~~[in millions of BTU per hour of all indirect heat exchangers]~~ at the source commenced before the applicable classification date; and

6. F = alternate allowable emission rate in lbs per actual ~~MMBTU heat input~~~~[million BTU input]~~.

(b) The total emissions (in ~~lb/hr~~) from all ~~affected facilities~~~~[lbs per hour] from all indirect heat exchangers~~ at the source subject to this administrative regulation divided by the total actual heat input (in ~~MMBTU/hr~~) of the ~~affected facilities~~~~[millions of BTU per hour] of the indirect heat exchangers~~ shall not exceed the alternate allowable emission rate as determined in paragraph (a) of this subsection;[-]

(c) A source operating an ~~affected facility~~ that~~[IHE, which]~~ is not subject to a federal ~~NSPS codified at~~~~[new source performance standard (NSPS) of]~~ 40 C.F.R. Part 60 only because the ~~affected facility~~~~[IHE]~~ commenced construction prior to the NSPS classification date, shall not allow emissions of the ~~affected facility~~ to exceed

the allowable emission rate determined pursuant to~~[by the IHE's rated heat input as specified in]~~ Sections 4 and 5 of this administrative regulation;[-]

(d) The source shall demonstrate compliance with this subsection by conducting a performance test pursuant to 401 KAR 50:045 for each ~~affected facility~~~~indirect heat exchanger~~ subject to this administrative regulation; and[-]

(e) The source shall demonstrate that compliance with this subsection shall be maintained ~~[with this subsection]~~ on a continual basis.

Section 4. Standard for Particulate Matter. Except as provided in Section 3(3) of this administrative regulation, an ~~affected facility~~~~indirect heat exchanger~~ subject to this administrative regulation shall not cause emissions of particulate matter in excess of:

(1)(a) ~~0.56 lb/MMBTU actual heat input for sources with total heat input capacity totaling ten (10) MMBTU/hr or less for all affected facilities at the source;~~

~~(b) 0.10 lb/MMBTU actual heat input for sources with total heat input totaling 250 MMBTU/hr or more for all affected facilities at the source; and~~

~~(c) 0.9634 multiplied by the quantity obtained by raising the total heat input capacity (in MMBTU/hr) to the -0.2356 power for sources with heat input values totaling greater than ten (10) MMBTU/hr and less than 250 MMBTU/hr for all affected facilities at the source; and~~~~[0.56 lbs per million BTU actual heat input for IHEs with total heat input capacity of ten (10) million BTU per hour or less;~~

~~(b) 0.10 lbs per million BTU heat input for IHEs with total heat input capacity of 250 million BTU per hour or more; and~~

~~(c) 0.9634 multiplied by the quantity obtained by raising the total heat input capacity (in millions BTU per hour) to the -0.2356 power for IHEs with heat input values greater than ten (10) million BTU per hour and less than 250 million BTU per hour; and]~~

(2) Twenty (20) percent opacity except:

(a) For sources with heat input capacity totaling 250 MMBTU/hr or more for all affected facilities at the source,~~indirect heat exchangers with heat input capacity of 250 million BTU per hour or more,~~ a maximum of twenty-seven (27) percent opacity shall be allowed for one (1) six (6) minute period in any sixty (60) consecutive minutes;

(b) For sources with heat input capacity totaling 250 MMBTU/hr or more for all affected facilities at the source,~~indirect heat exchangers with heat input capacity of less than 250 million BTU per hour,~~ a maximum of forty (40) percent opacity shall be allowed for a maximum of six (6) consecutive minutes in any sixty (60) consecutive minutes during fire box cleaning or soot blowing; and

(c) For emissions from an ~~affected facility~~~~indirect heat exchanger~~ caused by building a new fire, emissions during the period required to bring the boiler up to operating conditions shall be allowed, if the method used is recommended by the manufacturer and the time does not exceed the manufacturer's recommendations.

Section 5. Standard for Sulfur Dioxide. (1) Except as provided in Section 3(3) of this administrative regulation, ~~an affected facility~~~~[affected facilities]~~~~indirect heat exchangers~~ subject to this administrative regulation shall not cause emissions of gases that contain sulfur dioxide in excess of:

(a) For sources with heat input capacity totaling ten (10) MMBTU/hr or less for all affected facilities at the source~~[IHEs with total heat input capacity of ten (10) million BTU per hour or less]~~:

1. Three and zero-tenths (3.0) ~~lb/MMBTU~~~~[lbs per million BTU]~~ actual heat input for combustion of liquid and gaseous fuels; and

2. Five and zero-tenths (5.0) ~~lb/MMBTU~~~~[lbs per million BTU]~~ actual heat input for combustion of solid fuels;

(b) For sources with heat input capacity totaling 250 MMBTU/hr or more for all affected facilities at the source~~[IHEs with total heat input capacity of 250 million BTU per hour or more]~~:

1. Eight-tenths (0.8) ~~lb/MMBTU~~~~[lbs per million BTU]~~ actual heat input for combustion of liquid and gaseous fuels; and

2. One and two-tenths (1.2) ~~lb/MMBTU~~~~[lbs per million BTU]~~ actual heat input for combustion of solid fuels; and

(c) For sources with total heat input values greater than ten (10) MMBTU/hr and less than 250 MMBTU/hr for all affected facilities at the source [IHEs with heat input values between those specified in paragraphs (a) and (b) of this subsection], the standard, in lb/MMBTU [lbs per million BTU] actual heat input, shall be equal to:

1. The value 7.7223 multiplied by the quantity obtained by raising to the -0.4106 power the total heat input capacity (in MMBTU/hr) of the affected facilities combusting liquid fuels; [For combustion of liquid and gaseous fuels, the value 7.7223 multiplied by the quantity obtained by raising the total heat input capacity of the IHE in millions BTU per hour to the -0.4106 power; and]

2. The value 7.7223 multiplied by the quantity obtained by raising to the -0.4106 power the total heat input capacity (in MMBTU/hr) of the affected facilities combusting gaseous fuels; and

3. The value 13.8781 multiplied by the quantity obtained by raising to the -0.4434 power the total heat input capacity (in MMBTU/hr) of the affected facilities combusting solid fuels. [For combustion of solid fuels, the value 13.8781 multiplied by the quantity obtained by raising the total heat input capacity of the IHE in millions BTU per hour to the -0.4434 power.]

(2) [Compliance shall be based on the total heat input from all fuels burned.]

(3) For simultaneously burning different fuels in combination, the applicable standard shall be determined by prorating BTUs pursuant to the following equation: Allowable sulfur dioxide emission in lb/MMBTU/hr [lbs per million BTU per hour] heat input = $(y(a) + z(b))/(y + z)$, in which:

(a) y = percent total heat input derived from liquid or gaseous fuel;

(b) z = percent total heat input derived from solid fuel;

(c) a = allowable sulfur dioxide emission in lb/MMBTU/hr [lbs per million BTU] heat input derived from liquid or gaseous fuel; and

(d) b = allowable sulfur dioxide emission in lb/MMBTU/hr [lbs per million BTU] heat input derived from solid fuel.

(3) Compliance shall be based on the total heat input from all fuels burned.

Section 6. Standard for Nitrogen Oxides. (1) An affected facility [indirect heat exchanger] with heat input capacity of 250 MMBTU/hr [million BTU per hour] or more shall not cause emissions of gases that contain nitrogen oxides expressed as nitrogen dioxide in excess of:

(a) 0.20 [Twenty hundredths (0.20)] lb/MMBTU heat input (0.36 grams per million calories (g/MMCal)) [0.20 lbs per million BTU heat input (0.36 g per million cal)] derived from gaseous fuel;

(b) 0.030 [Thirty hundredths (0.30)] lb/MMBTU heat input (0.54 g/MMCal) [0.30 lbs per million BTU heat input (0.54 g per million cal)] derived from liquid fuel;

(c) 0.70 [Seventy hundredths (0.70)] [0.70 lbs per million BTU heat input (1.26 g per million cal)] derived from solid fuel except lignite;

(d) 0.60 [Sixty hundredths (0.60)] lb/MMBTU heat input (1.08 g/MMCal) [0.60 lbs per million BTU heat input (1.08 g per million cal)] derived from lignite or lignite and wood residue except as provided in paragraph (e) of this subsection; and

(e) 0.80 [Eighty hundredths (0.80)] lb/MMBTU [0.80 lbs per million BTU] derived from lignite that is mined in North Dakota, South Dakota, or Montana and that is burned in a cyclone-fired unit [IHE].

(2) Except as provided in subsections (3) and (4) of this section, if different fuels are burned simultaneously in any combination, the allowable nitrogen dioxide emission shall be prorated using the following equation: Allowable nitrogen dioxide emission in lb/MMBTU/hr heat input = $[x(0.20) + y(0.30) + z(0.70) + w(0.60)] / [x + y + z + w]$, in which: equation: Allowable nitrogen dioxide emission in lbs per million BTU/hour heat input = $[x(0.20) + y(0.30) + z(0.70) + w(0.60)] / (x + y + z + w)$, in which:

(a) x = percent of total heat input derived from gaseous fuel;

(b) y = percent of total heat input derived from liquid fuel;

(c) z = percent of total heat input derived from solid fuel (except lignite); and

(d) w = percent of total heat input derived from lignite.

(3) For fossil fuel containing at least twenty-five (25) percent by weight coal refuse burned in combination with gaseous, liquid, or

other solid fossil fuel; wood residue; or biomass, the standard for nitrogen oxides shall not apply.

(4) A cyclone-fired unit [IHEs] burning fuel containing at least twenty-five (25) percent lignite mined in North Dakota, South Dakota, or Montana shall be subject to subsection (1)(e) of this section for all types of fuel combusted in combination with the lignite.

Section 7. Emission and Fuel Monitoring. [This section shall apply to sources operating indirect heat exchangers with rated heat input capacity greater than 250 million BTU per hour.]

(1) Except as provided in subsection (2) of this section, sources shall install, calibrate, maintain, and operate a continuous monitoring system for measuring:

(a) Opacity of emissions;

(b) Sulfur dioxide emissions;

(c) Nitrogen oxides emissions; and

(d) Oxygen or carbon dioxide emissions [in the flue gases].

(2) Subsection (1) of this section shall not apply as follows:

(a) For an affected facility [affected facilities] [IHEs] burning only gaseous fuel, a continuous monitoring system for opacity (COMS) shall not be required. [;]

(b) For an affected facility [affected facilities] [IHEs] burning only natural gas, wood, wood residue, or biomass; or a combination of natural gas, wood, wood residue, or biomass, a continuous emissions monitoring system (CEMS) for sulfur dioxide emissions shall not be required. [;]

(c) 1. For nitrogen oxides [oxide], installation of CEMS may be delayed until after the initial performance tests required by 401 KAR 59:005, Sections 2 and 4(2); and

2. If the initial performance test results show nitrogen oxide emissions:

a. Are less than seventy (70) percent of the applicable standard in Section 6 of this administrative regulation, CEMS for nitrogen oxides shall not be required; or

b. Are equal to or greater than seventy (70) percent of the applicable standard in Section 6 of this administrative regulation, the source shall install CEMS for nitrogen oxides within one (1) year after the date of the initial performance tests. [;]

(d) For a source exempt from installing [COMS pursuant to paragraph (a) of this subsection and] CEMS for sulfur oxides and nitrogen oxides pursuant to paragraphs (b) and (c) of this subsection, a continuous monitoring system for measuring oxygen or carbon dioxide shall not be required. [;]

(e) For an affected facility not using a flue gas desulfurization device [IHEs not using flue gas desulfurization devices], CEMS for sulfur dioxide emissions shall not be required if the source monitors sulfur dioxide emissions by fuel sampling and analysis pursuant to subsection (5) of this section.

(3) For performance evaluations subject to 401 KAR 59:005, Section 4(3), and calibration checks subject to 401 KAR 59:005, Section 4(4), the following procedures shall be used:

(a) Reference Methods 6-6C or 7-7E, incorporated by reference in 401 KAR 50:015, as applicable, shall be used for conducting performance evaluations of CEMS for sulfur dioxide and nitrogen oxides;

(b) Sulfur dioxide or nitric oxide, as applicable, shall be used for preparing calibration gas mixtures pursuant to 40 C.F.R. Part 60, Appendix B, Performance Specification 2;

(c) The span value for a continuous monitoring system:

1. For an affected facility [IHEs] burning fossil fuels, shall be eighty (80), ninety (90), or 100 percent; and

2. For systems measuring sulfur oxides or nitrogen oxides, shall be determined pursuant to the following table;

DETERMINATION OF SPAN VALUE (in parts per million)		
Fossil Fuel	Span Value for Sulfur Dioxide	Span Value for Nitrogen Oxides
Gas	*	500
Liquid	1,000	500
Solid	1,500	500
Combinations	1,000y + 1,500z	500(x + y) + 1,000z

In which [3. For the table in subparagraph 2 of this paragraph]:

a. * shall indicate that a value shall not be applicable;

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b. x = fraction of total heat input derived from gaseous fossil fuel;

c. y = fraction of total heat input derived from liquid fossil fuel; and

d. z = fraction of total heat input derived from solid fossil fuel;

(d) Span values computed pursuant to paragraph (c) of this subsection for burning combinations of fuels shall be rounded to the nearest 500 ppm; and

(e) The source shall submit the proposed CEMS span value for cabinet approval pursuant to 40 C.F.R. 60.13(d) and this subsection, for all affected facilities[all IHEs] that simultaneously burn fossil fuel and nonfossil fuel [for cabinet approval pursuant to 40 C.F.R. 60.13(d) and this subsection].

(4) For continuous monitoring systems installed pursuant to subsection (1) of this section, the following conversion procedures shall be used to convert the continuous monitoring data into units of the applicable requirement in nanograms/joule (ng/J) or lb/MMBTU[lb/MMBTU]:

(a) For continuous monitoring systems measuring oxygen, the pollutant concentration and oxygen concentration shall be measured on a consistent wet or dry basis as follows:

1. Procedures approved by the cabinet and the U. S. EPA pursuant to 40 C.F.R. Part 60, Appendix B, shall be used for wet-basis measurements; and

2. For dry-basis measurements, the following conversion procedure shall be used:

$E = (20.9CF)/(20.9 - \text{percent oxygen})$ [20.9CF divided by (20.9 minus percent oxygen)] in which E , C , F , and percent oxygen shall be determined pursuant to subsection (5) of this section; and

(b) For continuous monitoring systems measuring carbon dioxide, the pollutant concentration and carbon dioxide concentration shall be measured on a consistent wet or dry basis and the following conversion procedure shall be used: $E = (100 CF_c)/(\text{percent carbon dioxide})$, in which E , C , F_c , and percent carbon dioxide shall be determined pursuant to subsection (5) of this section.

(5) The values used in the equations in subsection (4)(a) and (b) of this section shall be derived as follows:

(a) E = pollutant emissions in grams per million calorie (g/MMCal) or lb/MMBTU[g/MMCal or lb/MMBTU];

(b) C = pollutant concentration in grams per dry cubic meter at standard conditions (g/dscf) or pounds per dry cubic feet at standard conditions (lb/dscf) [g/dscf or lb/dscf] determined by multiplying the average concentration (ppm) for each one (1) hour period by 0.000415 M (g/dscm)/ppm or (lb/dscf)/ppm [g/dscm per ppm]; multiplied by two and five-tenths (2.5) multiplied by ten (10) raised to the negative ninth[nine] (9) power; and multiplied by M (g/dscm)/ppm or (lb/dscf)/ppm [lb/dscf per ppm] in which M equals:

1. Pollutant molecular weight in grams per gram-mole (g/g-mole) or pounds/pound-mole (lb/lb-mole) [g/g-mole or lb/lb-mole]; or

2. 64.07 for sulfur dioxide and 46.01 for nitrogen oxides;

(c) F , F_c = a factor representing a ratio of the volume of dry flue gases generated to the calorific value of the fuel combusted (F), and a factor representing a ratio of the volume of carbon dioxide generated to the calorific value of the fuel combusted (F_c), respectively, pursuant to the applicable American Society for Testing and Materials (ASTM) standard from the Book of ASTM Standards incorporated by reference in 401 KAR 50:015[incorporated by reference in 401 KAR 50:015] as follows:

1. For anthracite coal as classified according to ASTM D388-66(72), F equals 10,140 dscf/MMBTU[dscf/MMBTU] and F_c equals 1,980 standard cubic feet (scf) CO₂/MMBTU[CO₂/million BTU];

2. For subbituminous and bituminous coal as classified according to ASTM D388-66(72), F equals 9,820 dscf/MMBTU[dscf/MMBTU] and F_c equals 1,810 scf CO₂/MMBTU[CO₂/million BTU];

3. For liquid fossil fuels including crude, residual, and distillate oils, F equals 9,220 dscf/MMBTU[dscf/MMBTU] and F_c equals 1,430 scf CO₂/MMBTU[CO₂/million BTU];

4a. For gaseous fossil fuels, F equals 8,740 dscf/MMBTU[dscf/MMBTU];

b. For natural gas, [propane and butane fuels,] F_c equals 1,040 scf CO₂/MMBTU; for propane, F_c equals [CO₂/million BTU for natu-

ral gas,] 1,200 scf CO₂/MMBTU[CO₂/million BTU] for propane, and 1,260 scf CO₂/MMBTU[CO₂/million BTU] for butane];

5a. For bark, F equals 9,575 dscf/MMBTU[dscf/MMBTU] and F_c equals 1,927 scf CO₂/MMBTU[CO₂/million BTU];

b. For wood residue other than bark, F equals 9,233 dscf/MMBTU[dscf/MMBTU] and F_c equals 1,842 scf CO₂/MMBTU[CO₂/million BTU]; and

6. For lignite coal as classified according to ASTM D388-66(72), F equals 9,900 dscf/MMBTU[dscf/MMBTU] and F_c equals 1,920 scf CO₂/MMBTU[CO₂/million BTU];

(d) The source[owner or operator] may use the equation given in subparagraph 1 of this paragraph to determine an F factor (dscm/MMCal, or dscf/MMBTU[dscm/MMCal, or dscf/MMBTU]) on a dry basis or F_c factor (standard cubic meters (scm) CO₂/MMCal, or standard cubic feet (scf) CO₂/MMBTU)[scm CO₂/million cal, or scf CO₂/million BTU] on either wet or dry basis in lieu of the F or F_c factors specified in paragraph (c) of this subsection; where

1. The F or F_c Factor shall be determined by the following:

a. $F = \{227.2 (\%H) + 95.5 (\%C) + 35.6 (\%S) + 8.7 (\%N) - 28.7 (\%O)\} / \text{GCV (metric units)}$;

b. $F = 10^6 \{3.64 (\%H) + 1.53 (\%C) + 0.57 (\%S) + 0.14 (\%N) - 0.46 (\%O)\} / \text{GVC (English units)}$;

c. $F_c = \{2.0 \times 10^{-5} (\%C)\} / \text{GCV (metric units)}$; and

d. $F_c = \{3.21 \times 10^{-5} (\%C)\} / \text{GVC (English units)}$;

2. H , C , S , N , and O shall be content by weight of hydrogen, carbon, sulfur, nitrogen, and oxygen (expressed as percent), respectively, as determined on the same basis as GCV by ultimate analysis of the fuel fired using ASTM method D3178-73 or D3176-74 (solid fuels) or computed from results using ASTM methods D1137-53(75), D1945-64(73), or D1946-67(72) (gaseous fuels) as applicable; and

3. GCV shall be the gross calorific value (Cal/g or BTU/lb)[cal/g, BTU/lb] of the fuel combusted determined by ASTM test methods D2015-66(72) for solid fuels and D1826-64(70) for gaseous fuels as applicable; and

(e) For an affected facility firing a combination[IHEs firing combinations] of fuels, the F or F_c factors determined by paragraphs (c) and (d) of this subsection shall be prorated in accordance with the applicable formula as follows:

1. $F = xF_1 + yF_2 + zF_3$, where:

a. x , y , z = the fraction of total heat input derived from gaseous, liquid, and solid fuels[fuel], respectively; and

b. F_1 , F_2 , F_3 = the value of F for gaseous, liquid, and solid fuels, respectively, pursuant to subsection (5)(c) and (d) of this section; or

2. where:

$$F_c = \sum_{i=1}^n X_i (F_{ci})$$

a. X_i = fraction of total heat input derived from each type fuel; and

b. (F_{ci}) = applicable F_c factor for each fuel type determined pursuant to subsection (5)(c) and (d) of this section.

(6) For reports required pursuant to 401 KAR 59:005, Section 3(3), periods of excess emissions required to be reported shall be as follows:

(a) Excess emissions shall be any six (6) minute period during which the average opacity of emissions exceeds twenty (20) percent opacity, except that one (1) six (6) minute average per hour of up to twenty-seven (27) percent opacity shall not be required to be reported;

(b) For sulfur dioxide, excess emissions shall be any three (3) hour period during which the average emissions (arithmetic average of three (3) contiguous one (1) hour periods) of sulfur dioxide as measured by a continuous monitoring system exceed an applicable standard in Section 5 of this administrative regulation; and

(c) For nitrogen oxides, excess emissions [for IHEs using a continuous monitoring system for measuring nitrogen oxides] shall be any three (3) hour period during which the average emissions (arithmetic average of three (3) contiguous one (1) hour periods) of nitrogen oxides as measured by a continuous monitoring system exceed an applicable standard in Section 6 of this administrative regulation.

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(7) The source may request ~~approval~~ approval ~~in writing to the cabinet~~ to install a Particulate Matter Continuous Emissions Monitoring System (PM CEMS) ~~as an alternative to~~ in lieu of the requirement of subsection (1)(a) of this section ~~for a CEMS~~ as follows:

(a) The request for approval shall be made in writing to the cabinet;

(b) if the PM CEMS request is approved, the source:

1. Shall be subject to a federally enforceable PM limit of 0.030 lb/MMBTU/hr or less;

2. Shall comply with 40 C.F.R. 60.42Da(a) ~~and 60.43Da(a)~~;
and

3. Shall follow the ~~applicable~~ compliance and monitoring provisions of 40 C.F.R. 60.48Da and 60.49Da that are applicable to particulate matter, excluding 40 C.F.R. 60.48Da(c) and (g)(3); ~~and~~

(c) Excess emissions for an affected facility (HHE) using PM CEMS shall be determined by a boiler-operating-day, as defined by 40 C.F.R. 60.41, in which the average emissions (arithmetic average of all operating one (1) hour periods) exceed the applicable standard pursuant to 40 C.F.R. 60.42Da; and

(d) For calculating average emissions and determining compliance:

1. The boiler operating day shall have at least eighteen (18) hours of unit operation during which the standard shall apply;

2. All valid hourly emission rates of the boiler operating day not meeting the minimum eighteen (18) hours valid data daily average requirement shall be averaged with the valid hourly emission rates of the next boiler operating day with eighteen (18) hours or more of valid PM CEMS data; ~~and~~

(b) The source shall follow the applicable compliance and monitoring provisions of 40 C.F.R. 60.48Da and 60.49Da;

Section 8. Test Methods and Procedures. (1) Except as provided in 401 KAR 50:045, the reference methods specified in 40 C.F.R. Part 60, Appendix A - Test Methods, shall be used to determine compliance with Sections 4, 5, and 6 of this administrative regulation as follows:

(a) Reference Method 1 shall be used for the selection of sampling site and sample traverses;

(b) Reference Method 3 shall be used for gas analysis in applying Reference Methods 5, 6, and 7;

(c) Reference Method 5 shall be used for concentration of particulate matter and the associated moisture content;

(d) Reference Method 6 shall be used for the concentration of sulfur dioxide;

(e) Reference Method 7 shall be used for the concentration of nitrogen oxides; and

(f) Reference Method 9 shall be used for visible emissions.

(2) For Reference Method 5:

(a) Reference Method 1 shall be used to select the sampling site and the number of traverse sampling points;

(b) The sampling time for each run shall be at least sixty (60) minutes, and the minimum sampling volume shall be 0.85 dscm (thirty (30) dscf) except smaller sampling times or volumes, if necessitated by process variables or other factors, may be requested by the source; and

(c) The probe and filter holder heating systems in the sampling train shall be set to provide a gas temperature not greater than 160 degrees Centigrade (320 degrees Fahrenheit).

(3) For Reference Methods 6 and 7:

(a) The sampling site shall be the same as the site selected for Reference Method 5;

(b) The sampling point in the duct shall be at the centroid of the cross section or at a point no closer to the walls than one (1) meter (3.28 ft); and

(c) For Reference Method 6, the sample shall be extracted at a rate proportional to the gas velocity at the sampling point.

(4) For Reference Method 6:

(a) The minimum sampling time shall be twenty (20) minutes, and the minimum sampling volume shall be 0.02 dscm (0.71 dscf) for each sample;

(b) The arithmetic mean of two (2) samples shall constitute one (1) run; and

(c) Samples shall be taken at approximately thirty (30) minute intervals.

(5) For Reference Method 7:

(a) Each run shall consist of at least four (4) grab samples taken at approximately fifteen (15) minute intervals; and

(b) The arithmetic mean of the samples shall constitute the run value.

(6) For each run using the methods specified by subsection (1)(a), (b), and (c) of this section, the emissions expressed in g/MMCal (lb/MMBTU) ~~[g/million cal (lb/million BTU)]~~ shall be determined by the following procedure:

$E = \frac{20.9CF}{(20.9 - \text{percent oxygen})}$ ~~[20.9 CF divided by 20.9 minus percent oxygen]~~, in which:

(a) E = pollutant emission, g/MMCal (lb/MMBTU) ~~[g/million cal (lb/million BTU)]~~;

(b) C = pollutant concentration, g/dscm (lb/dscf), determined by Reference Methods 5, 6, or 7;

(c) Percent oxygen:

1. Shall equal oxygen content by volume (expressed as percent), dry basis; and

2. Shall be determined using the integrated or grab sampling and analysis procedures of Reference Method 3:

a. For determination of sulfur dioxide and nitrogen oxides emissions, the oxygen sample shall be obtained simultaneously at the same point in the duct as used to obtain the samples for Reference Methods 6 and 7 determinations, respectively, with the oxygen sample for reference Method 7 obtained using the grab sampling and analysis procedures of Reference Method 3; and [;]

b. For determination of particulate emissions, the oxygen sample shall be obtained simultaneously by traversing the duct at the same sampling location used for each run of Reference Method 5 pursuant to subsection (2) of this section, using Reference Method 1 for selection of the number of traverse points except that not more than twelve (12) points shall be required; and ~~[e. Reference Method 1 shall be used for selection of the number of traverse points except that not more than twelve (12) sample points shall be required; and]~~

(d) F = a factor as determined in Section 7(5) of this administrative regulation.

(7) If an affected facility fires a combination of fossil fuels ~~[are fired]~~, the heat input, expressed in Cal/hr (BTU/hr) ~~[cal/hr (BTU/hr)]~~, shall be determined during each testing period by multiplying the gross calorific value of each fuel fired by the rate of each fuel burned, in which:

(a) Gross calorific value shall be determined in accordance with ASTM methods D2015-66(72) (solid fuels), D240-76 (liquid fuels), or D1826-64(70) (gaseous fuels) as applicable; and

(b) The rate of fuels burned during each testing period shall be determined by the applicable method and shall be confirmed by a material balance over the steam generation system.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: May 7, 2010

FILED WITH LRC: May 12, 2010 at noon

CONTACT PERSON: Millie Ellis, Internal Policy Analyst III, Division for Air Quality, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, telephone (502) 564-3999, fax (502) 564-4666, e-mail millie.ellis@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Millie Ellis

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes standards of performance for new indirect heat exchangers with heat input capacity between one (1) million and 250 million BTU heat input per hour.

(b) The necessity of this administrative regulation:

This administrative regulation regulates indirect heat exchangers as part of the Kentucky State Implementation Plan (SIP).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(5) requires the Energy and Environment Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This

administrative regulation provides for the control of emissions of specific pollutants of concern from new indirect heat exchangers with heat input capacity between one (1) million and 250 million BTU heat input per hour or more that are not subject to a standard for each pollutant under a federal New Source Performance Standard (NSPS) as required under the Kentucky SIP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation regulates indirect heat exchangers as required under the Kentucky SIP.

(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 adds clarifying language to Section 3(3), which allows the use of an alternative method for determining allowable emission rate at the source. The language at Section 7(7), which provides for approval of the alternative monitoring system, PM CEMS, to be available to regulated entities for monitoring emissions from indirect heat exchangers, is also corrected and clarified to ensure the U.S. EPA's approval of this revision to the Kentucky State Implementation Plan (SIP). The amendment also restores the reference to "affected facilities" throughout the administrative regulation, which was inadvertently changed in the previous amendment.

(b) The necessity of the amendment to this administrative regulation: It is necessary to amend this administrative regulation to clarify the provision in Section 7(7), which allows the use of particulate matter continuous emissions monitoring (PM-CEMS) so that use of this alternative will be approvable as a revision to the Kentucky SIP. After the revision to this administrative regulation is effective, source-specific SIP revisions will no longer be necessary for sources approved by the Cabinet on a case-by-case basis to use PM-CEMS as an alternative to COMS. While this is the only substantive amendment being proposed, existing regulatory language has been further amended to clarify provisions in Section 3 and to restore references to "affected facilities". Amendments in formatting and grammar were also necessary in order to comply with KRS Chapter 13A.

(c) How the amendment conforms to the content of the authorizing statutes: The administrative regulation, as amended, conforms to KRS Chapter 224 in that it provides the same test method alternatives that are allowed under the federal regulation, 40 C.F.R. Part 60, Subpart D.

(d) How the amendment will assist in the effective administration of statutes: The administrative regulation, as amended, will provide sources with additional reference methods that are approved by the cabinet and the U.S. EPA.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This administrative regulation will continue to apply to indirect heat exchangers with heat input capacity between one (1) million and 250 million BTU heat input per hour or more.

(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: While owners or operators of indirect heat exchangers subject to this administrative regulation will continue to be required to monitor the emissions from these units and to maintain the units so that emissions are within permitted limits, the amendment results in no new requirements for sources. Instead, the amendment provides additional U.S. EPA-approved flexibility to sources for demonstrating compliance.

(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 added costs resulting from this amendment, but rather, the amendment will result in cost savings to regulated sources.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of this amendment, sources will have greater flexibility in choosing reference methods for monitoring emissions and demonstrating compliance for the

opacity standard.

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

(a) Initially: There are no additional costs associated with this amendment.

(b) On a continuing basis:

While there are no new costs associated with the amendment to this administrative regulation, continuing costs are included in the Division for Air Quality's normal day-to-day operating budget.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No new revenue is required because the funding for this program has been included in the Division for Air Quality's operating budget.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Consistent with the federal regulation for indirect heat exchangers, this administrative regulation is tiered by heat input capacity size and by the variations in fuels used.

FISCAL NOTE ON STATE AND 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. 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 has the potential to affect any unit, part or division of state or local government operating an emissions unit that meets the applicability determination of Section 2 of this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 224.10-100(5); 42 U.S.C. 7401-7671q; 40 C.F.R. Part 60; and 40 C.F.R. 52.920(c) authorize the action taken by this administrative regulation.

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

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

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

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

Costs are already included in the Division for Air Quality's normal day-to-day operating budget.

(d) How much will it cost to administer this program for subsequent years? Continuing costs will be included in the Division for Air Quality's normal day-to-day operating budget.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS

(1) Federal statute or regulation constituting the federal mandate. The federal mandate for this administrative regulation is

in 40 C.F.R. 52.920(c) and Part 60.

(2) State compliance standards. The state compliance standards are found in KRS 224.10-100(5).

(3) Minimum or uniform standards contained in the federal mandate. The federal mandate consists of the approval of this administrative regulation to the Kentucky SIP. It requires any source with an affected facility described in Section 2 of the administrative regulation to meet the specified standards for particulate matter, sulfur dioxide, and nitrogen oxides. It also requires monitoring, reporting, and the use of specific reference methods.

(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 is not more stringent than the federal mandate.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter standards or additional or different responsibilities or requirements.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, AUGUST 13, 2010

FINANCE AND ADMINISTRATIVE CABINET
Department of Revenue
Office of Sales and Excise Taxes
(Amendment)

103 KAR 3:020. Sales and Telecommunications Forms manual.

RELATES TO: KRS 61.870-61.884, 131.00-131.130, 131.50-131.240, [131.020, 131.030, 131.041-131.081, 131.081, 131.110, 131.130, 131.155, 131.170, 131.181, 131.183, 131.190, 131.190(1), 131.580, 136.600-136.660, 139.010-139.795, [139.040, 139.185, 139.210, 139.230, 139.240, 139.250, 139.260, 139.270, 139.470, 139.480, 139.483, 139.495, 139.497, 139.515, 139.517, 139.518, 139.550, 139.570, 139.590, 139.620(1), 139.770(2), 139.778,] 144.132, 144.137, 154.20-206, 160.613-160.617, 224.01-310, 247.920

STATUTORY AUTHORITY: KRS 131.130(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required Revenue Forms used in the administration of Sales and Use Taxes and Telecommunications Excise and Gross Revenues Tax by the Department of Revenue.

Section 1. Sales and Use Tax - Required Forms. (1) Revenue Form 51A101(a), Sales and Use Tax Permit, shall be conspicuously displayed by the sales and use tax permit holder at the location for which the permit was issued.

(2) Revenue Form 51A101(b), Sales and Use Tax Permit Update, shall be issued by the Department of Revenue to update the Sales and Use Tax Permit with business name and address change information.

(3) Revenue Form 51A101(c)(1), Kentucky Streamlined Sales and Use Tax (SST) Filing Permit, shall be issued to Model 1 Streamlined Sales and Use Tax filers registered in Kentucky and shall be conspicuously displayed by the SST permit holder at the location for which the permit was issued.

(4) Revenue Form 51A101(c)(2), Kentucky Streamlined Sales and Use Tax (SST) Filing Permit, shall be issued to Model 2 Streamlined Sales and Use Tax filers registered in Kentucky and shall be conspicuously displayed by the SST permit holder at the location for which the permit was issued.

(5) Revenue Form 51A101(c)(4), Kentucky Streamlined Sales and Use Tax (SST) Filing Permit, shall be issued to Model 4 Streamlined Sales and Use Tax filers registered in Kentucky and shall be conspicuously displayed by the SST permit holder at the location for which the permit was issued.

(6) Revenue Form 51A101(d), Sales and Use Tax Permit Update (SST), shall be issued by the Department of Revenue to update the Kentucky Streamlined Sales and Use Tax (SST) Filing Permit with business name and address change information.

(7) Revenue Form 51A102, Kentucky Sales and Use Tax Worksheet, shall be submitted to the Department of Revenue by a Kentucky sales and use tax permit holder to report total receipts, itemized deductions, amount subject to Kentucky use tax and total amount of Kentucky sales and use tax due for a particular reporting period.

(8) Revenue Form 51A102E, Kentucky Sales and Use Tax Worksheet - Electronic Funds Transfer, shall be submitted to the Department of Revenue by a Kentucky sales and use tax permit holder who remits payment via electronic funds transfer to report total receipts, itemized deductions, amount subject to Kentucky use tax and total amount of Kentucky sales and use tax due for a particular reporting period.

(9) Revenue Form 51A103, Kentucky Accelerated Sales and Use Tax Worksheet, shall be completed by a Kentucky sales and use tax permit holder who has been designated as an accelerated filer to report total receipts, itemized deductions, amount subject to use tax, and total amount of sales and use tax due.

(10) Revenue Form 51A103E, Kentucky Accelerated Sales and Use Tax Worksheet - Electronic Funds Transfer, shall be submitted on a monthly basis by a Kentucky sales and use tax permit holder to report total receipts, itemized deductions, amount subject to use tax, and total amount of sales and use tax due on an accelerated basis and remitted via electronic funds transfer.

(11) Revenue Form 51A105, Resale Certificate, shall be presented to a seller by a Kentucky sales and use tax permit holder to claim that the tangible personal property or digital property purchased from the seller will be:

- (a) Resold in the regular course of business;
- (b) Leased or rented; or
- (c) Used as raw material, industrial supply or industrial tool.

(12) Revenue Form 51A109, Application for Energy Direct Pay Authorization (Sales and Use Tax and Utility Gross Receipts License Tax), shall be filed with the Department of Revenue by a manufacturer, processor, miner or refiner to apply for an energy direct pay authorization.

(13) Revenue Form 51A110, Direct Pay Authorization, shall be presented to a Kentucky sales and use tax permit holder by a company authorized to report and pay directly to the Department of Revenue the sales or use tax on all purchases of tangible personal property, or digital property excluding energy and energy-producing fuels.

(14) Revenue Form 51A111, Certificate of Exemption Machinery for New and Expanded Industry, shall be presented to a Kentucky sales and use tax permit holder by a manufacturer or production processor to claim exemption from sales and use tax.

(15) Revenue Form 51A112, Application for Direct Pay Authorization, shall be submitted by a registered sales and use tax permit holder wishing to obtain a direct pay authorization.

(16) Revenue Form 51A113, Kentucky Consumer's Use Tax Worksheet, shall be completed by a registered consumer's use tax permit holder and submitted to the Department of Revenue on a regular basis to report the amount of purchases of tangible personal property and digital property subject to Kentucky use tax.

(17) Revenue Form 51A113(O)Consumer's Use Tax Return" shall be completed by a person storing, using, or otherwise consuming tangible personal property or digital property in Kentucky who is not registered for a consumer's use tax permit number.

(18) Revenue Form 51A115, Order for Selected Sales and Use Tax Publications, shall be presented to the Department of Revenue by anyone who wishes to order selected sales and use tax forms and regulations.

(19) Revenue Form 51A116, Use Tax Compliance Inquiry Worksheet, shall be completed by a purchaser of Watercraft, Aircraft, or other tangible or digital property to document if the purchase of the property is subject to the Kentucky Use Tax.

(20) Revenue Form 51A125, Application for Purchase Exemption Sales and Use Tax, shall be presented to the Department of Revenue by a resident 501C(3) charitable, educational, or religious institution; historical sites; and units of federal, state or local governments to apply for a sales and use tax exemption on purchases of tangible personal property, and digital property and certain services to be utilized in the exempt entity's function.

(21) Revenue Form 51A126, Purchase Exemption Certificate, shall be presented to a retailer by a resident charitable, educational or religious institution or Kentucky historical site to claim exemption from sales and use tax on purchases of tangible personal property, digital property or services.

(22) Revenue Form 51A127, Out-of-State Purchase Exemption Certificate, shall be presented to a retailer by an out-of-state agency or institution that is qualified for exemption in their state of residence.

(23) Revenue Form 51A128, Solid Waste Recycling Machinery Exemption Certificate, shall be presented to a retailer by a business or organization that claims exemption from sales and use tax on the purchase, lease or rental of machinery or equipment to be primarily used for recycling purposes to collect, source separate, compress, bale, shred or otherwise handle waste material.

(24) Revenue Form 51A129, Kentucky Sales and Use Tax Energy Exemption Annual Return, shall be submitted to the De-

partment of Revenue by an energy direct pay holder to reconcile the actual amount of sales and use tax due on purchases of energy and energy-producing fuels to the total amount of sales and use tax paid based upon previous estimates of tax due.

(25) Revenue Form 51A130, Kentucky Sales and Use Tax Monthly Aviation Fuel Tax Credit Schedule of Qualified Certificated Air Carriers, shall be completed by a qualified certificated air carrier on a monthly basis to claim an aviation fuel tax credit against the company's sales and use tax liability for the month.

(26) Revenue Form 51A131, Kentucky Sales and Use Tax Monthly Aviation Fuel Dealer Supplementary Schedule, shall be completed by aviation fuel dealers selling aviation fuel in order to determine the sales and use tax collected and remitted on the sale of aviation fuel, including jet fuel.

(27) Revenue Form 51A132, Kentucky Sales and Use Tax Equine Breeders Supplementary Schedule, shall be completed by an equine breeder to report taxable receipts from equine breeding fees.

(28) Revenue Form 51A135, Kentucky Sales Tax Motor Vehicle Sales Supplementary Schedule, shall be completed by motor vehicle dealers who collect Kentucky sales tax on the sale of motor vehicles to residents of states who subject Kentucky residents to sales upon the purchase of motor vehicles in their states.

(29) Revenue Form 51A143, Purchase Exemption Certificate - Watercraft Industry, shall be presented to a retailer by a purchaser to claim exemption from sales and use tax on the purchase of tangible personal property that will be used for the direct operation of watercraft in the activity of transporting property or in conveying persons for hire.

(30) Revenue Form 51A149, Certificate of Exemption for Pollution Control Facilities, shall be presented to a retailer by a holder of a pollution control tax exemption certificate or jointly by a contractor and the holder of a pollution control tax exemption certificate to claim exemption from sales and use tax on the purchase of materials and equipment that will become part of a certified pollution control facility.

(31) Revenue Form 51A150, Aircraft Exemption Certificate, shall be presented to a retailer by a purchaser to claim exemption from sales and use tax on the purchase of aircraft, repair and replacement parts for the aircraft, and supplies that will be used for the direct operation of aircraft in interstate commerce and used exclusively for the conveyance of property or passengers for hire.

(32) Revenue Form 51A154, Certificate of Exemption Out-of-State Delivery for Aircraft, All Terrain Vehicle (ATV), Mobile/Manufactured Homes, Campers, Boats, Motors or Trailers, shall be completed in triplicate by the seller and buyer when the sale of the tangible personal property occurs and the seller makes delivery of the tangible personal property out of state, and also completes the affidavit portion of the form within two (2) days of the time of delivery to claim that the property was purchased exempt from sales tax and delivered immediately out of state not to return to Kentucky for use.

(33) Revenue Form 51A157, Certificate of Exemption - Water Used in Raising Equine, shall be presented to a retailer by a person regularly engaged in raising equine as a business to claim exemption for the purchase of water used to raise equine.

(34) Revenue Form 51A158, Farm Exemption Certificate, shall be presented to a retailer by a person regularly engaged in the occupation of tilling and cultivating the soil for the production of crops, raising and feeding livestock or poultry; or raising and feeding llamas, alpacas, ratites, buffalo, aquatic organisms, or cervids to claim exemption from sales and use tax on the purchase of certain tangible personal property.

(35) Revenue Form 51A159, On-Farm Facilities Certificate of Exemption for Materials, Machinery and Equipment, shall be presented to a retailer by a farmer or jointly by a farmer and a contractor to claim exemption from sales and use tax on the purchase of materials, machinery and equipment which will be incorporated into the construction, repair, or renovation of on-farm facilities exempt under the provisions of KRS 139.480.

(36) Revenue Form 51A160, Application for Truck Part Direct Pay Authorization, shall be filed with the Department of Revenue by the owner of a motor vehicle, including a towed unit, qualifying for the repair and replacement part exemption provided under KRS

139.480(32)(a) to apply for the truck part direct pay authorization.

(37) Revenue Form 51A161, Truck Part Direct Pay Authorization, shall be issued by the Department of Revenue to authorize motor carriers to report and pay directly to the department the sales and use tax on all purchases of repair and replacement parts for motor vehicles and to authorize retailers to sell motor vehicle repair and replacement parts directly to the authorized motor carrier without receipt of sales and use tax.

(38) Revenue Form 51A163, Application for Charter Bus Part Direct Pay Authorization, shall be filed with the Department of Revenue by the owner of a charter bus qualifying for the repair and replacement part exemption provided under KRS 139.480(32)(b) to apply for a charter bus direct pay authorization.

(39) Revenue Form 51A164, Charter Bus Direct Pay Authorization, shall be issued by the Department of Revenue to authorize charter bus carriers to report and pay directly to the Department the sales and use tax on all purchases of repair and replacement parts for charter buses, and to authorize retailers to sell charter bus repair and replacement parts directly to the charter bus carriers without receipt of sales and use tax.

(40) Revenue Form 51A200, Application for Kentucky Enterprise Initiative Act (KEIA) Tax Refund Program, shall be used by qualified businesses to apply for a refund of sales and use tax paid on purchases of materials used in an approved project.

(41) Revenue Form 51A205, Kentucky Sales and Use Tax Instructions, shall be used by Kentucky sales and use tax permit holders as a guide in filing their sales and use tax returns and maintaining permit account information.

(42) Revenue Form 51A209, Sales and Use Tax Refund Application, shall be completed by a Kentucky sales and use tax permit holder and submitted to the Department of Revenue within four (4) years from the date the tax was paid to apply for a refund of sales and use tax previously paid by the permit holder.

(43) Revenue Form 51A216, Application for Pollution Control Tax Exemption Certificate, shall be completed by a business, governmental unit or institution to apply for a sales and use tax exemption on purchases of tangible personal property used to control or abate pollution.

(44) Revenue Form 51A222, Certificate of Exemption for Alcohol Production Facilities, shall be presented to a retailer by a holder of an alcohol production tax exemption certificate or jointly by a contractor and the holder of an alcohol production tax exemption certificate to claim exemption from sales and use tax on materials and equipment that will become a part of an alcohol production facility as provided by KRS Chapter 247.

(45) Revenue Form 51A223, Application for Alcohol Production Facility Tax Exemption Certificate, shall be completed by a business seeking exemption from sales and use tax on the purchase of materials and equipment that will become a part of an alcohol production facility as provided by KRS Chapter 247.

(46) Revenue Form 51A226, Pollution Control Tax Exemption Certificate, shall be issued by the Department of Revenue to a business who has qualified for certain sales and use tax, corporation income, corporation license, and property tax benefits.

(47) Revenue Form 51A227, Certificate of Resale (Schools), shall be issued to a retailer by an exempt nonprofit elementary or secondary school or the organizations they sponsor or that are affiliated with them to claim an exemption from sales and use tax on the purchase of tangible personal property and digital property that will be resold if the proceeds from the resale of the property is used solely for the benefit of the elementary or secondary schools or their students.

(48) Revenue Form 51A228, Application for Fluidized Bed Combustion Technology Tax Exemption Certificate, shall be completed by a business, governmental unit or organization and submitted to the Department of Revenue to apply for a sales and use tax exemption on the purchase of equipment and materials used in fluidized bed combustion technology.

(49) Revenue Form 51A229, Fluidized Bed Combustion Technology Tax Exemption Certificate, shall be issued by the Department of Revenue to a business, governmental unit or organization to advise that they qualify for corporation license tax, property tax, and sales and use tax benefits.

(50) Revenue Form 51A241, Registration for the Kentucky

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Sales and Use Tax Refund for Motion Picture and Television Production Companies, shall be completed by a motion picture production company and submitted to the Department of Revenue to register for a sales and use tax refund.

(51) Revenue Form 51A242, Application for Sales and Use Tax Refund for Motion Picture Production Company, shall be completed by a registered motion picture production company and submitted to the Department of Revenue within sixty (60) days after completion of the filming or production of the motion picture in Kentucky to request a refund of the Kentucky sales and use tax paid on purchases of tangible personal property and digital property made in connection with filming and producing motion pictures in Kentucky.

(52) Revenue Form 51A250, Application for Transient Merchant Permit, shall be completed by a transient merchant and filed with the clerk in the county in which the business is to be conducted, or if an urban county government, with the officer of the government who has responsibility for the issuance of business permits and licenses to obtain a permit before conducting any business in Kentucky.

(53) Revenue Form 51A260, Streamlined Sales and Use Tax Agreement-Certificate of Exemption, shall be presented to a seller by a purchaser to claim that tangible personal property, digital property and certain services purchased from the seller qualifies for exemption.

(54) Revenue Form 51A270, Certificate of Sales Tax Paid on the Purchase of a Motor Vehicle, shall be issued by motor vehicle dealers to a non-resident purchaser of a motor vehicle on which the Kentucky sales tax has been paid.

(55) Revenue Form 51A280, Out-Of-State Purchase-Use Tax Affidavit, shall be submitted to the county clerk by a taxpayer purchasing tangible personal property from out-of-state for title or first-time registration.

(56) Revenue Form 51A290, Information Sharing and Assignment Agreement for Designated Refund Claims, shall be submitted by an approved company or agency and its vendors and contractors who agree to share documentation with the Department of Revenue for refund claim under the Kentucky Enterprise Initiative Act, Signature Project, or Alternative Fuel, Gasification or Renewable Energy Facility.

(57) Revenue Form 51A291, Application for Kentucky Signature Project Sales and Use Tax Refund, shall be completed by an approved company or agency in the construction of an approved Signature Project submitted to the Department of Revenue annually during the (12) years the project grant agreement is in effect.

(58) Revenue Form 51A292, Expenditure Report for Signature Project Refunds, shall be submitted by a refund applicant to document expenditures and taxes paid on property and materials used in the construction of an approved Signature Project.

(59) Revenue Form 51A300, Application for Preapproval for Energy Efficiency Machinery or Equipment, shall be submitted by a person engaged in manufacturing for preapproval for purchase of new or replacement machinery or equipment that reduces the consumption of energy or energy producing fuels by at least fifteen (15) percent.

(60) Revenue Form 51A301, Application for Kentucky Alternative Fuel, Gasification, and Renewable Energy Facility Sales and Use Tax Refund, shall be submitted by a refund applicant to request refund of sales and use tax paid on purchases of building and construction materials purchased and used in the construction of an approved Alternative Fuel, Gasification, or Renewable Facility.

(61) Revenue Form 51A302, Expenditure Report for Alternative Fuel, Gasification, & Renewable Energy Facility Refunds, shall be submitted by a refund applicant to document expenditures and taxes paid on property and materials used in the construction of an approved Alternative Fuel, Gasification, or Renewable Energy Facility.

(62) Revenue Form 51A350, Information Sharing and Assignment Agreement for Energy Efficiency Project Incentive, shall be submitted by an approved company or agency and its vendors and contractors who agree to share documentation with the Department of Revenue for refund claims on construction of an approved Alternative Fuel, Gasification, or Renewable Energy Facility.

(63) Revenue Form 51A351, Application for Energy Efficiency Machinery or Equipment Sales and Use Tax Incentive, shall be submitted by a refund applicant to request refund of sales and use tax paid on purchases of approved energy-efficiency machinery or equipment used at a manufacturing plant.

(64) Revenue Form 51A400, Governmental Public Facility Sales Tax Rebate Registration, shall be completed by the public facility to determine eligibility for the sales tax rebate under KRS 139.533.

(65) Revenue Form 51A401, Governmental Public Facility Application for Sales Tax Rebate, shall be completed by the Public Facility to request sales tax rebate(s). It includes a list of vendors and tax amounts claimed in the rebate request as well as banking information if an electronic fund transfer is requested by the Public Facility.

(66) Revenue Form 51A402, Vendor Assignment Agreement for Sales at a Qualifying Public Facility shall be properly executed for any seller, other than the qualifying governmental entity whose receipts are included in the rebate request.

(67) [(64)] Revenue Form 51F008, Federal Government Exemption from Kentucky Sales and Use Tax, shall be issued by the Department of Revenue to a federal government unit which in turn is presented to a retailer by the federal government unit to claim exemption from sales and use tax on purchases of ~~tangible personal~~ property to be used in the exempt governmental function.

(68) [(65)] Revenue Form 51F009, Purchase Exemption Notification, shall be issued by the Department of Revenue to a resident nonprofit charitable, educational or religious institution to advise the entity of the assigned purchase exemption number and additional information concerning the exemption from sales and use tax.

(69) [(66)] Revenue Form 51F010, Energy Direct Pay Authorization, shall be issued by the Department of Revenue to advise a Kentucky sales and use tax permit holder that it has been authorized to purchase energy and energy-producing fuels without paying or reimbursing the vendor for the sales and use tax and that they are required to report and pay directly to the Department of Revenue the sales and use tax on that portion of the cost price which is subject to tax pursuant to KRS 139.480(3).

(70) [(67)] Revenue Form 51F010(a), Utility Gross Receipts License Tax (UGRLT) Exemption Authorization, shall be issued by the Department of Revenue to advise a Kentucky sales and use tax permit holder that it has been authorized to purchase energy and energy-producing fuels without paying or reimbursing the vendor for the utility gross receipts license tax and that they are required to report and pay directly to the Department of Revenue the utility gross receipts license tax on that portion of the purchase price which is subject to tax.

(71) [(68)] Revenue Form 51F010(b), Energy Direct Pay - Utility Gross Receipts License Tax Exemption Authorization, shall be issued by the Department of Revenue to advise a Kentucky sales and use tax permit holder that it has been authorized to purchase energy and energy-producing fuels without paying or reimbursing the vendor for either the sales and use tax or the utility gross receipts license tax and that they are required to report and pay directly to the Department of Revenue the sales and use tax and the utility gross receipts license tax on that portion of the purchase price which is subject to tax.

Section 2. Telecommunications Provider Tax-Required Forms.(1) Revenue Form 75A001, Telecommunications Tax Receipts Certification Form, shall be used by city and county taxing jurisdictions to certify tax receipts for prior fiscal year if applicable.

(2) Revenue Form 75A002, Telecommunications Provider Tax Return, shall be used by telecommunications providers to report gross revenues subject to the excise tax and gross revenues tax, and by consumers to report retail purchases of multi-channel video programming services to report the tax due.

(3) Revenue Form 75A002 (I), Instructions for Telecommunications Provider Tax Return, shall be used by telecommunications providers as a guide in filing their telecommunications provider tax return.

(4) Revenue Form 75A005, Telecommunications Tax Complaint Form", shall be submitted to the Department of Revenue by

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local taxing authorities who express disagreement with the distribution of telecommunications tax to their jurisdiction.

(5) Revenue Form 75A900, Telecommunications Tax Application, shall be used by telecommunications providers to register with the Department of Revenue.

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

(a) Sales and use tax - referenced material:

1. Revenue Form 51A101(a), "Sales and Use Tax Permit", August 2008;
2. Revenue Form 51A101(b), "Sales and Use Tax Permit Update", August 2008
3. Revenue Form 51A101(c)(1), "Kentucky Streamlined Sales and Use Tax (SST) Filing Permit", August 2008;
4. Revenue Form 51A101(c)(2), Kentucky Streamlined Sales and Use Tax (SST) Filing Permit", August 2008;
5. Revenue Form 51A101(c)(4), Kentucky Streamlined Sales and Use Tax (SST) Filing Permit", August 2008;
6. Revenue Form 51A101(d), "Sales and Use Tax Permit Update (SST)", August 2008;
7. Revenue Form 51A102, "Kentucky Sales and Use Tax Worksheet", January 2010~~[January 2008]~~;
8. Revenue Form 51A102E, "Kentucky Sales and Use Tax Worksheet - Electronic Funds Transfer", January 2010~~[January 2009]~~;
9. Revenue Form 51A103, "Kentucky Accelerated Sales and Use Tax Worksheet", January 2010~~[January 2009]~~;
10. Revenue Form 51A103E, "Kentucky Accelerated Sales and Use Tax Worksheet - Electronic Funds Transfer", January 2010~~[January 2009]~~;
11. Revenue Form 51A105, "Resale Certificate", December 2009~~[January 2006]~~;
12. Revenue Form 51A109, "Application for Energy Direct Pay Authorization (Sales and Use Tax and Utility Gross Receipts License Tax)", September 2006;
13. Revenue Form 51A110, "Direct Pay Authorization", June 2010~~[August 1997]~~;
14. Revenue Form 51A111, "Certificate of Exemption Machinery for New and Expanded Industry", December 2008;
15. Revenue Form 51A112, "Application for Direct Pay Authorization", December 2009~~[March 2005]~~;
16. Revenue Form 51A113, "Kentucky Consumer's Use Tax Worksheet", January 2010~~[July 2005]~~;
17. Revenue Form 51A113(O), "Consumer's Use Tax Return", December 2009~~[August 2006]~~;
18. Revenue Form 51A115, "Order for Selected Sales and Use Tax Publications", April 2008;[:]
19. Revenue Form 51A116, "Use Tax Compliance Inquiry Worksheet", March 2008;
20. Revenue Form 51A125, "Application for Purchase Exemption Sales and Use Tax", December 2009~~[January 2008]~~;
21. Revenue Form 51A126, "Purchase Exemption Certificate", December 2009~~[August 2004]~~;
22. Revenue Form 51A127, "Out-of-State Purchase Exemption Certificate", December 2009~~[April 2007]~~;
23. Revenue Form 51A128, "Solid Waste Recycling Machinery Exemption Certificate", March 2005;
24. Revenue Form 51A129, "Kentucky Sales and Use Tax Energy Exemption Annual Return", December 2008;
25. Revenue Form 51A130, "Kentucky Sales and Use Tax Monthly Aviation Fuel Tax Credit Schedule of Qualified Certificated Air Carriers", August 2005;
26. Revenue Form 51A131, "Kentucky Sales and Use Tax Monthly Aviation Fuel Dealer Supplementary Schedule", August 2008;
27. Revenue Form 51A132, "Kentucky Sales and Use Tax Equine Breeders Supplementary Schedule", June 2005;
28. Revenue Form 51A135, "Kentucky Sales Tax Motor Vehicle Sales Supplementary Schedule", August 2006;
29. Revenue Form 51A143, "Purchase Exemption Certificate - Watercraft Industry", March 2005;
30. Revenue Form 51A149, "Certificate of Exemption for Pollution Control Facilities", January 2007;

31. Revenue Form 51A150, "Aircraft Exemption Certificate", January 2005;
32. Revenue Form 51A154, "Certificate of Exemption Out-of-State Delivery for Aircraft, All Terrain Vehicle (ATV), Mobile/Manufactured Homes, Campers, Boats, Motors or Trailers", January 2005;
33. Revenue Form 51A157, "Certificate of Exemption - Water Used in Raising Equine", July 2005;
34. Revenue Form 51A158, "Farm Exemption Certificate", July 2008;
35. Revenue Form 51A159, "On-Farm Facilities Certificate of Exemption for Materials, Machinery and Equipment", July 2008;
36. Revenue Form 51A160, "Application for Truck Part Direct Pay Authorization", March 2005;
37. Revenue Form 51A161, "Truck Part Direct Pay Authorization", December 2006;
38. Revenue Form 51A163, "Application for Charter Bus Part Direct Pay Authorization", June 2005;
39. Revenue Form 51A164, "Charter Bus Direct Pay Authorization", August 2006.
40. Revenue Form 51A200, "Application for Kentucky Enterprise Initiative Act (KEIA) Tax Refund Program", March 2008;
41. Revenue Form 51A205, "Kentucky Sales and Use Tax Instructions", July 2008;
42. Revenue Form 51A209, "Sales and Use Tax Refund Application", May 2007;
43. Revenue Form 51A216, "Application for Pollution Control Tax Exemption Certificate", March 2005;
44. Revenue Form 51A222, "Certificate of Exemption for Alcohol Production Facilities", January 2007;
45. Revenue Form 51A223, "Application for Alcohol Production Facility Tax Exemption Certificate", July 1980;
46. Revenue Form 51A226, "Pollution Control Tax Exemption Certificate", March 2005;
47. Revenue Form 51A227, "Certificate of Resale (Schools)", May 2007;
48. Revenue Form 51A228, "Application for Fluidized Bed Combustion Technology Tax Exemption Certificate", May 2007;
49. Revenue Form 51A229, "Fluidized Bed Combustion Technology Tax Exemption Certificate", January 2008;
50. Revenue Form 51A241, "Registration for the Kentucky Sales and Use Tax Refund for Motion Picture and Television Production Companies", May 2007;
51. Revenue Form 51A242, "Application for Sales and Use Tax Refund for Motion Picture Production Company", May 2007;
52. Revenue Form 51A250, "Application for Transient Merchant Permit", April, 2005;
53. Revenue Form 51A260, "Streamlined Sales and Use Tax Agreement - Certificate of Exemption", February 2010~~[August 2008]~~;
54. Revenue Form 51A270, "Certificate of Sales Tax Paid on the Purchase of a Motor Vehicle", August 2006;
55. Revenue Form 51A280, "Out-Of-State Purchase-Use Tax Affidavit", July 2009~~[July 2007]~~;
56. Revenue Form 51A290, "Information Sharing and Assignment Agreement for Designated Refund Claims", October 2007;
57. Revenue Form 51A291, "Application for Kentucky Signature Project Sales and Use Tax Refund", October 2007;
58. Revenue Form 51A292, "Expenditure Report for Signature Project Refunds", October 2007;
59. Revenue Form 51A300, "Application for Preapproval for Energy Efficiency Machinery or Equipment", June 2008;
60. Revenue Form 51A301, "Application for Kentucky Alternative Fuel, Gasification, and Renewable Energy Facility Sales and Use Tax Refund", December 2008;
61. Revenue Form 51A302, "Expenditure Report for Alternative Fuel, Gasification, & Renewable Energy Facility Refunds", December 2008;
62. Revenue Form 51A350, "Information Sharing and Assignment Agreement for Energy Efficiency Project Incentive", June 2008;
63. Revenue Form 51A351, "Application for Energy Efficiency Machinery or Equipment Sales and Use Tax Incentive", June 2008;
64. Revenue Form 51A400, "Governmental Public Facility

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Sales Tax Rebate Registration", June 2010:

65. Revenue Form 51A401, "Governmental Public Facility Application for Sales Tax Rebate", June 2010:

66. Revenue Form 51A402, "Vendor Assignment Agreement for Sales at a Qualifying Public Facility", June 2010:

67.[64-] Revenue Form 51F008, "Federal Government Exemption from Kentucky Sales and Use Tax", January 2008;

68.[66-] Revenue Form 51F009, "Purchase Exemption Notification", January 2008;

69.[66-] Revenue Form 51F010, "Energy Direct Pay Authorization", January 2008;

70.[67-] Revenue Form 51F010(a), "Utility Gross Receipts License Tax (UGRLT) Exemption Authorization", January 2008; and

71.[68-] Revenue Form 51F010(b), "Energy Direct Pay - Utility Gross Receipts License Tax Exemption Authorization", January 2008;

(b) Telecommunications provider tax - referenced material:

1. Revenue Form 75A001, "Telecommunications Tax Receipts Certification Form", December 2005;

2. Revenue Form 75A002, "Telecommunications Provider Tax Return", March 2006[December 2005];

3. Revenue Form 75A002(I), "Instructions for Telecommunications Provider Tax Return", July 2006;

4. Revenue Form 75A005, "Telecommunications Tax Complaint Form", October 2006; and

5. Revenue Form 75A900, "Telecommunications Tax Application", December 2005.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40620, or at any Kentucky Department of Revenue Taxpayer Service Center, Monday through Friday, 8 a.m. to 5 p.m.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: August 11, 2010

FILED WITH LRC: August 12, 2010 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed amended administrative regulation shall be held on September 23, 2010 from 10 a.m. to 12:00 p.m. in Room 386, Capitol Annex Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the required date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 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 noted below.

CONTACT PERSON: DeVon Hankins, Policy Advisor, Office of General Counsel, Finance and Administration Cabinet, 392 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-6660, fax (502) 564-9875.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DeVon Hankins, Policy Advisor

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required revenue forms used in the administration of Sales and Use Tax and Telecommunications Excise and Gross Revenues Tax by the Department of Revenue.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order for the Department of

Revenue to meet the requirements of KRS Chapter 13A.110 which requires that forms required to be submitted by a regulated entity shall be included in an administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required revenue forms used in the administration of the Sales and Use Tax and the Telecommunications Excise and Gross Revenues Tax by the Department of Revenue.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation incorporates by reference the required revenue forms used in the administration of the Sales and Use Tax and Telecommunications Excise and Gross Revenues Tax by the Department of Revenue.

(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 updated form information.

(b) The necessity of the amendment to this administrative regulation: Amendment is necessary to ensure that the most recent versions of forms are referenced.

(c) How the amendment conforms to the content of the authorizing statutes: Incorporates the most recent forms by reference as authorized by KRS 131.130(3).

(d) How the amendment will assist in the effective administration of the statutes: Informs taxpayers of the most recent versions of forms that should be used to file their tax returns.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Kentucky taxpayers and their representatives will be affected by the listing of forms administered by the Department of Revenue in an administrative regulation. Local government will be affected to the extent they utilize forms administered by the Department of Revenue. The Department of Revenue will be affected to the extent that it administers the referenced forms.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions will have to be taken by the taxpayers or local governments to comply with this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no anticipated cost incurred by the taxpayer or local government.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Taxpayers will be able to reference all sales and use and telecommunications excise and gross revenues tax forms in one location.

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

(a) Initially: The Department of Revenue will not incur additional costs as the result of this regulation.

(b) On a continuing basis: The Department of Revenue will not incur additional costs as the result of this regulation.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied be-

cause the requirements of this regulation apply to every taxpayer.

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 Revenue will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(3).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No additional expenditures or revenue for the Commonwealth or local 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? This administrative regulation will not generate 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 revenue.

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

(d) How much will it cost to administer this program for subsequent years? No additional cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FINANCE AND ADMINISTRATION CABINET

Department of Revenue

Office of Sales and Excise Taxes

(Amendment)

103 KAR 3:050. Miscellaneous Taxes Forms manual.

RELATES TO: KRS 42.470, 61.870-61.884, 131.020-131.130 [~~131.020, 131.030, 131.041-131.081, 131.081(2), (9), (15), 131.110, 131.130, 131.130(3), (10), 131.155, 131.170, 131.181, 131.183, 131.190, [131.190(1)], 131.340, 131.500, [131.500(1), (2), (3), (10)], 131.510 [(1), (2)(a)], 131.540, 132.020, 132.130-132.180, 132.190, 132.200, 132.220-132.270, 132.290-132.320, [132.290, 132.310, 132.320], 132.450, 132.487, 132.510, 132.820, 132.990, 133.045, 133.110, 133.120, 133.130, 133.240, [134.020, 134.300], 134.420, [134.430, 134.440, 134.500], 134.580(4)], 134.590, 134.800-134.830, [~~134.800, 134.805, 134.810, 134.815, 134.820, 134.825, 134.830], 135.010, 135.020, 135.050, 136.020, 136.050, 136.070, 136.071, 136.0704, 136.090, 136.100, 136.115-136.180, 136.1873, 136.310-136.335, [136.340, 136.320, 136.330, 136.335], 136.377, 136.392, 136.545, 136.575, 136.600-136.660, 137.130, 137.160, 138.165(2)], 138.195, 138.210-138.885, [~~138.210, 138.240, 138.250, 138.260, 138.270, 138.320, 138.341, 138.342, 138.344-138.355, 138.358, 138.450, 138.460, 138.464, 138.4605, 138.470(1), (5), (6), 138.502, 138.530, 138.870, 138.876, 138.880, 138.885], 140.010-140.360, [140.010, 140.060, 140.080(1)(a), 140.100, 140.130, 140.160, 140.165, 140.190, 140.222, 140.300-140.360, 140.350], 142.010-142.404, [~~142.010, 142.040, 142.050, 142.321, 142.327, 142.357], 143.030(4)], 143.037, 143.040, 143.050, 143.060(4)], 143.085, 143.990, 143A.010, 143A.030, 143A.035, 143A.037, 143A.080, 143A.090, 143A.100(4)], 143A.991, [~~144.120(4)], 154.22-50-154.22-070, [154.22-050, 154.22-060, 154.22-070], 154.23-010, 154.24-110, 154.24-130, 154.26-090, 154.28-090, 154.34-010, 155.170,~~~~~~~~~~

160.613-160.617, 209.160, 224.01-310(4)], 224.60, 234.321, 234.370, 243.710-243.884, [~~243.740, 243.720, 243.730, 243.850, 243.884], 248.756(2)], 299.530, 304.4-030, 304.11-050, 304.49-220, 351.175, 395.470(3)], 413.120~~

STATUTORY AUTHORITY: KRS 131.130(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required Revenue Forms used in the administration of miscellaneous taxes by the Department of Revenue other than Income Taxes, Sales and Use Taxes, Telecommunications Excise and Gross Revenues Tax, Severance Taxes, and Property Taxes.

Section 1. Alcoholic Beverage Tax. (1) Revenue Form 73A504, Acknowledgment of Tax Liability on Imported Alcoholic Beverages, shall be used by persons importing distilled spirits, wine and malt beverages into Kentucky through the United States Bureau of Customs for personal consumption in this state to acknowledge liability for the alcoholic beverage excise tax.

(2) Revenue Form 73A525, Monthly Report of Distillers, Rectifiers or Bottlers, shall be used by distillers, rectifiers, or bottlers of distilled spirits to report liability for distilled spirits excise tax and wholesale sales tax.

(3) Revenue Form 73A526, Wholesaler's Monthly Distilled Spirits Tax Report, shall be used by wholesalers of distilled spirits to report liability for distilled spirits excise tax, wholesale sales tax, and case sales tax.

(4) Revenue Form 73A527, Wholesaler's List of Individual Spirits Shipments Acquired, shall be used by wholesalers of distilled spirits to itemize monthly receipts of distilled spirits from all sources.

(5) Revenue Form 73A529, Consignor's Report of Alcoholic Beverages Shipped, shall be used by consignors of distilled spirits and wine to report trafficking in alcoholic beverages during the previous month.

(6) Revenue Form 73A530, Consignor's Report of Alcoholic Beverages Shipped, shall be used by consignors of distilled spirits and wine to report trafficking in alcoholic beverages during the previous month.

(7) Revenue Form 73A531, Transporter's Report of Alcoholic Beverages Delivered, shall be used by transporters of distilled spirits, wine, and malt beverages to report shipments of alcoholic beverages delivered into the state during the previous month.

(8) Revenue Form 73A535, Report of Destruction of Alcoholic Beverages, shall be used by governmental officials to certify quantities of tax-paid alcoholic beverages no longer suitable for consumption that are destroyed in the official's presence.

(9) Revenue Form 73A575, Wholesaler's Monthly Wine Tax Report, shall be used by wine wholesalers to report liability for wine excise tax and wine wholesale sales tax.

(10) Revenue Form 73A576, Vintner's Wine Report, shall be used by vintners to report liability for wine excise tax and wine wholesale sales tax.

(11) Revenue Form 73A577, Wholesaler's List of Individual Wine Shipments Acquired, shall be used by wine wholesalers to report shipments of wine received during the previous month.

(12) Revenue Form 73A626, Brewer's Monthly Report Schedule, shall be used by brewers of malt beverages to report sales and distribution of malt beverages into Kentucky.

(13) Revenue Form 73A627, Beer Distributor's Monthly Report, shall be used by beer distributors to report shipments of malt beverages received during the previous month.

(14) Revenue Form 73A628, Distributor's Monthly Malt Beverage Excise Tax and Wholesale Sales Tax Report, shall be used by distributors of malt beverages to report liability for malt beverage excise tax and malt beverage wholesale sales tax.

(15) Revenue Form 73A629, Beer Distributor's Sales to Federal Agencies, shall be used by beer distributors to report shipments of malt beverages to federal military agencies.

Section 2. Bank Franchise Tax - Required Forms. (1) Revenue Form 73A800, Kentucky Registration Application for Bank Fran-

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chise Tax, shall be used by financial institutions which are regularly engaged in business in Kentucky to register for the Kentucky Bank Franchise Tax.

(2) Revenue Form 73A801(P), ~~2009~~²⁰⁰⁸ Kentucky Bank Franchise Tax Forms and Instructions, shall be the packet used by financial institutions to register for the Kentucky Bank Franchise Tax, to determine the net capital and annual tax due, and to request a ninety (90) day extension of time to file the Kentucky Bank Franchise Tax Return.

(3) Revenue Form 73A801, Bank Franchise Tax Return, shall be used by financial institutions to determine the net capital and Kentucky Bank Franchise Tax due for the calendar year ~~2009~~²⁰⁰⁸.

(4) Revenue Form 73A802, Application for 90-Day Extension of Time to File Kentucky Bank Franchise Tax Return, shall be used by financial institutions to request a ninety (90) day extension of time to file the Kentucky Bank Franchise Tax Return.

Section 3. Cigarette Tax - Required Forms. (1) Revenue Form 73A181, Cigarette Licenses and Other Tobacco Product Account Number Application, shall be used by persons interested in acting as a cigarette wholesaler, subjobber, vending machine operator, transporter, or unclassified acquirer to apply for the necessary license.

(2) Revenue Form 73A190, Cigarette License, shall be used by the Department of Revenue to give evidence to cigarette wholesalers, subjobbers, vending machine operators, transporters, and unclassified acquirers that they have been granted the appropriate license.

(3) Revenue Form 73A404, Cigarette Tax Stamps Order Form, shall be used by licensed cigarette wholesalers or unclassified acquirers to order cigarette tax stamps.

(4) Revenue Form 73A406, Cigarette Tax Credit Certificate, shall be used by the Department of Revenue to give credit to a licensed cigarette wholesaler or unclassified acquirer for cigarette tax stamps returned or destroyed.

(5) Revenue Form 73A409, Cigarette Evidence/Property Receipt, shall be used by compliance officers and the property owner to acknowledge custody of seized goods.

(6) Revenue Form 73A420, Monthly Report of Cigarette Wholesaler, shall be used by a licensed cigarette wholesaler to report cigarette inventory, tax stamp reconciliation, and liability for cigarette administration and enforcement fee and to report cigarettes that were purchased from manufacturers and importers of cigarettes who did not sign the Master Settlement Agreement (nonparticipating manufacturers).

(7) Revenue Form 73A420(I), Instructions for Monthly Report of Cigarette Wholesaler, shall be used by cigarette wholesalers and nonparticipating manufacturers to file Revenue Form 73A420.

(8) Revenue Form 73A421, 2009 Inventory Floor Tax for Cigarettes, Other Tobacco Products (OTP), and Snuff for Inventories as of March 31, 2009, ~~Cigarette Inventory Floor Tax for Inventories as of May 31, 2005~~, shall be used by cigarette retailers or licensees to report cigarette inventories and the one-time inventory floor tax.

(9) Revenue Form 73A421A, 2009 Inventory Floor Tax for Cigarettes, Other Tobacco Products (OTP), and Snuff, shall be used by cigarette retailers or licensees to report and pay installment two (2) of the one-time inventory floor tax.

(10) Revenue Form 73A421B, 2009 Inventory Floor Tax for Cigarettes, Other Tobacco Products (OTP), and Snuff, shall be used by cigarette retailers or licensees to report and pay installment three (3) of the one-time inventory floor tax.

(11) Revenue Form 73A421W, 2009 Inventory Floor Tax for Cigarettes, Other Tobacco Products (OTP), and Snuff, shall be used by cigarette licensees to report cigarette and stamp inventories and the one-time inventory floor tax.

(12) Revenue Form 73A422, Monthly Report of Other Tobacco Products and Snuff, shall be used by cigarette licensees to report gross receipts from other tobacco products, total units of snuff sold, and tax liability.

(13) Revenue Form 73A423, Monthly Report of Cigarette Papers, shall be used by vendors or wholesalers to file the tax owed on rolling papers sold.

(14) Revenue Form 73B401, Cigarette Tax Credit Claim Who-

lesaler's Affidavit, shall be signed by a licensed cigarette wholesaler attesting that the reported tax evidence did or did not have the twenty-seven (27) cents surtax paid on it.

Section 4. Health Care Provider Tax. (1) Revenue Form 73A060, Health Care Provider Tax Return shall be used by taxpayers to file the gross revenues and compute the tax for the health care provider tax.

(2) Revenue Form 73A060(I), Instructions - Kentucky Health Care Provider Tax Return shall be used by the taxpayers to determine if the service they provide is taxable, what tax rate is applicable, and which line to use for reporting.

(3) Revenue Form 73A061, Kentucky Health Care Provider Application for Certificate of Registration shall be completed by the taxpayer to register for the health care provider tax.

Section 5. Inheritance Tax - Required Forms. (1) Revenue Form 92A101, Kentucky Nonresident Inheritance and Estate Tax Return, shall be used by the personal representative or beneficiary of a nonresident estate to establish the inheritance and estate tax due the Commonwealth for dates of death on or after July 1995.

(2) Revenue Form 92A110, Real Estate Data Report, shall be used by the personal representative or beneficiary of an estate on each piece of real estate to provide a description and valuation of the property for dates of death on July 1, 1995 through June 30, 1998.

(3) Revenue Form 92A120, Kentucky Resident Inheritance and Estate Tax Return, shall be used by the personal representative or beneficiary of a resident estate to establish the inheritance and estate tax due the Commonwealth for dates of death on or after July 1995.

(4) Revenue Form 92A120-S, Inheritance and Estate Tax Return - Short Form shall be used by the personal representative or beneficiary of a resident estate to establish the appropriate inheritance and estate tax due the Commonwealth.

(5) Revenue Form 92A120-X, Kentucky Spousal Inheritance Tax Return, shall be used by the personal representative or beneficiary of a resident estate to establish there is no inheritance and estate tax due the Commonwealth.

(6) Revenue Form 92A121, Acceptance of Inheritance and Estate Tax Return, shall be sent by the inheritance and estate tax section to the personal representative or beneficiary of an estate to certify that all death taxes due the Commonwealth have been paid.

(7) Revenue Form 92A200, Kentucky Inheritance and Estate Tax Return, shall be used by the personal representative or beneficiary of a resident or nonresident estate to establish the inheritance and estate tax due the Commonwealth.

(8) Revenue Form 92A200PKT, Kentucky Inheritance and Estate Tax Forms and Instructions, shall be used by the personal representative or beneficiary of a resident or nonresident estate to establish the inheritance and estate tax due the Commonwealth for deaths occurring on or after July 1, 1998.

(9) Revenue Form 92A201, "Kentucky Inheritance Tax Return No Tax Due, shall be used by the personal representative or beneficiary of a resident or nonresident estate to establish that there is no inheritance and estate tax due the Commonwealth.

(10) Revenue Form 92A202, Kentucky Estate Tax Return shall be used by the personal representative or beneficiary of a resident or nonresident estate to establish the estate tax due the Commonwealth.

(11) Revenue Form 92A204, Real Estate Valuation Information Form, shall be used by the personal representative or beneficiary of an estate to establish the taxable value of real estate for inheritance tax purposes.

(12) Revenue Form 92A205, Kentucky Inheritance Tax Return (Simplified Format), shall be used by the personal representative or beneficiary of a small or uncomplicated resident or nonresident estate to establish the inheritance and estate tax due the Commonwealth.

(13) Revenue Form 92A928, Election to Defer the Payment of Inheritance Tax through Installments, shall be used by the beneficiary or beneficiaries of an estate to defer the payment of inheritance tax through installments.

(14) Revenue Form 92A929, Notice of Agricultural and Horti-

cultural Inheritance Tax Lien, shall be used to request the county clerk to place a lien on a particular piece of real estate due to the personal representative, on behalf of an estate, electing the use of agricultural or horticultural value.

(15) Revenue Form 92A930, Certificate of Release of Agricultural and Horticultural Inheritance Tax Lien, shall be used by the inheritance and estate tax section to request the county clerk to release the five (5) year lien that guaranteed collection of tax if the terms of the agreement are not met or if the five (5) years have expired.

(16) Revenue Form 92A931, Certificate of Partial Discharge of the Agricultural and Horticultural Inheritance Tax Lien, shall be used by the inheritance and estate tax section to request the county clerk to do a partial release of the five (5) year lien that guaranteed collection of tax if the terms of the agreement are not met or if the five (5) years have expired.

(17) Revenue Form 92A932, Receipt of Inheritance and Estate Taxes, shall be given to the taxpayer when tax payment is received in the office.

(18) Revenue Form 92A936, Election to Qualify Terminable Interest Property and/or Power of Appointment Property, shall be used by a personal representative or beneficiary to elect to qualify terminable interest property or power of appointment property if proper criteria exists.

(19) Revenue Form 92F001, Inheritance Tax Lien Releases and Inventory of Safe Deposit Boxes, shall be used to access lock boxes without requiring written consent or presence of the Department of Revenue or local PVA official and shall provide a blanket lien release on all property owned by any decedent.

(20) Revenue Form 92F101, A Guide to Kentucky Inheritance and Estate Taxes, shall be used by the general public for information purposes concerning Kentucky inheritance and estate tax.

Section 6. Insurance Tax - Required Forms. (1) Revenue Form 74A100, Insurance Premiums Tax Return, shall be used by domestic and foreign life insurance companies, stock insurance companies other than life, and foreign mutual companies other than life to report liability for domestic and foreign life insurance tax, other than life insurance tax, fire insurance tax and retaliatory taxes and fees.

(2) Revenue Form 74A101, Insurance Premiums Tax Return - Domestic Mutual, Domestic Mutual Fire, or Cooperative and Assessment Fire Insurance Companies, shall be used by domestic mutual, domestic mutual fire or cooperative and assessment fire insurance companies to report liability for premiums tax on amounts paid to authorized and unauthorized reinsurance companies.

(3) Revenue Form 74A105, Unauthorized Insurance Tax Return, shall be used by insurers not authorized to conduct business in the Commonwealth of Kentucky by the Department of Insurance to report liability for insurance premiums tax.

(4) Revenue Form 74A106, Insurance Premiums Tax Return - Captive Insurer, shall be completed by domestic and foreign insurance companies to report captive insurance tax.

(5) Revenue Form 74A110, Kentucky Estimated Insurance Premiums Tax for Calendar Year 2009, shall be used by insurance companies to remit estimated premiums tax payments.

(6) Revenue Form 74A116, Tax Election for Domestic Life Insurance Companies, shall be used by domestic life insurance companies to make an irrevocable election to pay state capital and reserves tax, premiums tax, and the county and city capital and reserves tax or to pay state premiums tax and local government premiums tax.

(7) Revenue Form 74A117, Monthly Insurance Surcharge Report - Domestic Mutual, Cooperative and Assessment Fire Insurer, shall be used by domestic mutual, cooperative and assessment fire insurers to report liability for insurance premium surcharge.

(8) Revenue Form 74A118, Monthly Insurance Surcharge Report, shall be used by domestic, foreign and alien insurers, other than life and health insurers, to report liability for an insurance premium surcharge.

Section 7. Legal Process - Required Forms. (1) Revenue Form 73A200, County Clerk's Monthly Report of Legal Process Tax Re-

ceipts, shall be used by the county clerks to report the county's liability for the legal process tax and spouse abuse shelter fund.

(2) Revenue Form 73A201, Quarterly Report of Affordable Housing Trust Fund Fee, shall be used by the county clerks to report the county's liability for the affordable housing trust fund fee.

Section 8. Marijuana and Controlled Substance - Required Forms. (1) Revenue Form 73A701, Instructions for Affixing Marijuana and Controlled Substance Tax Evidence (Stamp), shall be used by the Kentucky Department of Revenue to provide persons ordering marijuana and controlled substance tax stamps with the appropriate instructions on affixing the stamps.

(2) Revenue Form 73A702, Notice of Tax Lien KRS 138.870 Marijuana and Controlled Substance Tax, shall be used by law enforcement officials to notify the Kentucky Department of Revenue and county clerks of the seizure of marijuana and other controlled substances.

(3) Revenue Form 73A703, Marijuana or Controlled Substance Stamp Order Form, shall be used by taxpayers to order stamps for marijuana or controlled substances.

Section 9. Motor Fuels - Required Forms. (1) Revenue Form 72A004, Motor Fuels Tax Watercraft Refund Bond, shall be used by an approved surety to establish surety obligation upon the payment to the Commonwealth of any refunds to which the public boat dock refund applicant was not entitled.

(2) Revenue Form 72A005, Application for Approval to Sell Watercraft Refund Motor Fuels - Public Boat Dock, shall be used by a public boat dock owner to apply for approval to sell watercraft refund motor fuels.

(3) Revenue Form 72A006, Motor Fuel Tax Refund Application - Public Boat Dock, shall be used by a public boat dock refund applicant to make application for refund of liquid fuel tax on purchases of liquid fuel delivered directly to the fuel tanks attached to the watercraft and used exclusively in watercraft motors.

(4) Revenue Form 72A010, Motor Fuel Tax Refund Permit Holder's Bond, shall be used by an approved surety to establish surety obligation upon the payment of all taxes, penalties, and fines for which the designated refund applicant may become liable under KRS 138.344 to 138.355.

(5) Revenue Form 72A011, Petroleum Storage Tank Environmental Assurance Fee Monthly Report, shall be used by licensed gasoline or special fuels dealers to report and remit monthly petroleum storage tank environmental assurance fee amounts due.

(6) Revenue Form 72A052, Kentucky Motor Fuels Tax Refund Permit, shall be used by the Department of Revenue to issue Kentucky Motor Fuels Tax Refund Permits.

(7) Revenue Form 72A053-A, Application for Refund of Kentucky Motor Fuel Tax Paid on Nonhighway Motor Fuels, shall be used by Kentucky Motor Fuels Tax Refund Permit holders to apply for refund of Kentucky motor fuel tax paid on nonhighway motor fuel.

(8) Revenue Form 72A065, Aviation Gasoline Tax Refund Bond, shall be used by an approved surety to establish surety obligation upon the payment to the Commonwealth of any refunds to which the aviation gasoline refund applicant was not entitled.

(9) Revenue Form 72A066, Application for Refund of Kentucky Tax Paid on Gasoline Used in Operation of Aircraft, shall be used by an aviation gasoline refund applicant to make application for refund of Kentucky tax paid on gasoline used in operation of aircraft.

(10) Revenue Form 72A067, Application for Approval to Receive a Refund of Aviation Motor Fuels, shall be used by aviation gasoline tax refund applicants seeking approval to receive a refund of aviation gasoline tax.

(11) Revenue Form 72A071, Motor Fuels Tax Refund Bond (City and Suburban Bus, Nonprofit Bus, Senior Citizen Transportation, or Taxicabs), shall be used by a surety company authorized to do business in Kentucky to establish surety obligation upon the payment to the Commonwealth of any refunds to which a city and suburban bus, nonprofit bus, senior citizen transportation or taxicab refund applicant was not entitled.

(12) Revenue Form 72A072, Application for Motor Fuel Refund - City and Suburban Bus Companies, Nonprofit Bus Companies,

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Senior Citizen Transportation, and Taxicab Companies, shall be used by refund applicants to make application for refund of Kentucky tax paid on fuel used in the operation of city and suburban bus companies, nonprofit bus companies, senior citizen transportation, and taxicab companies.

(13) Revenue Form 72A073, Application for Approval to Receive a Refund of Tax on Motor Fuels Consumed by City and Suburban Buses, Nonprofit Buses, Senior Citizen Transportation and Taxicabs, shall be used by qualifying applicants to make application for approval to receive a refund of tax on motor fuels consumed by city and suburban buses, nonprofit buses, senior citizen transportation, and taxicabs.

(14) Revenue Form 72A078, Statement of Claim for Accountable Loss of Motor Fuel, shall be used by licensed gasoline or special fuels dealers to make claim for accountable loss of motor fuel.

(15) Revenue Form 72A089, Licensed Gasoline Dealer's Monthly Report, shall be used by licensed gasoline dealers to report and remit monthly gasoline tax.

(16) Revenue Form 72A098, Transporter's Report of Motor Fuel Delivered, shall be used by licensed transporters to report a summation of monthly motor fuel deliveries.

(17) Revenue Form 72A099, Transporter's Report, shall be used by licensed transporters to report monthly motor fuel deliveries.

(18) Revenue Form 72A110, Certification of Motor Fuels Non-highway Use, shall be used by qualifying entities to certify the non-highway use of special fuels. The certification shall be maintained by the licensed special fuels dealer.

(19) Revenue Form 72A135, Application for Kentucky Motor Fuels Tax Refund Permit, shall be used by a person desiring to qualify for a refund of motor fuel excise tax paid for nonhighway use.

(20) Revenue Form 72A138, Licensed Special Fuels Dealer's Monthly Report, shall be used by a licensed special fuels dealer to report the total special fuels gallons received and distributed for a specific monthly period.

(21) Revenue Form 72A161, Monthly Report Liquefied Petroleum Gas Dealer, shall be used by a licensed liquefied petroleum gas dealer to report all gallons of liquefied petroleum gas dispensed into the fuel tanks of licensed motor vehicles for a specific monthly period.

(22) Revenue Form 72A170, Monthly Terminal Report, shall be used by a licensed motor fuels dealers to summarize all Kentucky terminal receipt and disbursement activity for a specific monthly period.

(23) Revenue Form 72A178, Distributor's Schedule of Disbursements, shall be used by motor fuels dealers to report all disbursements for a specific monthly period.

(24) Revenue Form 72A179, Distributor's Schedule of Receipts, shall be used by gasoline and special fuels dealers to report all receipts for a specific monthly period.

(25) Revenue Form 72A180, Schedule 15A-Terminal Operator Schedule of Receipts, shall be used by gasoline and special fuels terminal operators to report all receipts for a specific monthly period.

(26) Revenue Form 72A181, Schedule 15B-Terminal Operator Schedule of Disbursement, shall be used by gasoline and special fuels terminal operators to report all disbursements for a specific monthly period.

(27) Revenue Form 72A300, Tax Registration Application for Motor Fuels License, shall be used by an applicant to register for a gasoline dealer's, special fuels dealer's, liquefied petroleum gas dealer's, motor fuel transporter's, or terminal owner-operator's license.

(28) Revenue Form 72A301, Motor Fuels License Bond, shall be executed by a corporation authorized to transact surety business in Kentucky on behalf of a licensee to insure payment of taxes, penalties, and interest for which a dealer or transporter may become liable.

(29) Revenue Form 72A302, Motor Fuels License, shall be used by the Department of Revenue to issue a license to the qualified applicant in gasoline, special fuels, motor fuels transporter, or liquefied petroleum gas dealer.

(30) Revenue Form 72A303, Election Application/Cancellation

Form, shall be used by gasoline and special fuels dealers to elect to pledge a financial instrument other than a corporate surety bond.

(31) Revenue Form 72A304, Motor Fuel Tax Electronic Filing Application, shall be used by motor fuels dealers to choose an electronic filing method.

Section 10. Motor Vehicle Usage Tax - Required Forms. (1) Revenue Form 71A010, Motor Vehicle Usage Tax - Vehicle Condition Refund Application, shall be used by a taxpayer to apply for a refund of motor vehicle usage tax paid under KRS 138.150(16) based on the condition of the vehicle.

(2) Revenue Form 71A100, Affidavit of Total Consideration Given for a Motor Vehicle, shall be presented to the county clerk to establish taxable value upon the first registration or transfer of a motor vehicle for motor vehicle usage tax purposes.

(3) Revenue Form 71A101, Motor Vehicle Usage Tax Multi-Purpose Form, shall be presented to the county clerk by a vehicle owner to:

(a) Claim one (1) of several exemptions;

(b) Establish retail price if prescribed by the department; or

(c) Establish retail price of new vehicles with equipment or adaptive devices added to facilitate or accommodate handicapped persons.

(4) Revenue Form 71A102, Questionnaire, shall be completed by selected motor vehicle buyers and sellers providing specific information regarding a vehicle transaction.

(5) Revenue Form 71A174, County Clerk's Adjusted Recapitulation of Motor Vehicle Usage Tax - Weekly Report, shall be submitted to the Department of Revenue by a county clerk as a recapitulation form to list all motor vehicle usage tax receipts, adjusted for corrections and commissions for a given week.

(6) Revenue Form 71A174-A, County Clerk's Recapitulation of Motor Vehicle Usage Tax - Interim Report, shall be submitted to the Department of Revenue by a county clerk to report motor vehicle usage tax collections if an extension of time to file the computer generated weekly recapitulation report is requested.

(7) Revenue Form 71F004, Motor Vehicle Usage Tax - Loaner-Rental Program, shall be used by motor vehicle dealers for instructions on how to register for the Loaner-Rental Program and file monthly reports.

(8) Revenue Form 72A007, Affidavit of Nonhighway Use, shall be used by taxpayers attesting that a motor vehicle will not be operated upon Kentucky's public highways.

(9) Revenue Form 73A054, Kentucky Application For Dealer Loaner/Rental Vehicle Tax, shall be used by motor vehicle dealers to register to participate in the Loaner/Rental Vehicle Tax program.

(10) Revenue Form 73A055, Monthly Report For Dealer Loaner/Rental Vehicle Tax, shall be used by motor vehicle dealers to report tax due on vehicles dedicated for use in the Loaner/Rental Vehicle Tax program.

(11) Revenue Form 73A070, Motor Vehicle Usage Tax Request for Extension of Reports, Deposit and/or ACH Call-in, shall be used by county clerks for extension of daily deposits, daily ACH call-ins or weekly reports.

Section 11. Racing Taxes - Required Form. Revenue Form 73A100, Race Track Pari-Mutuel and Admissions Report, shall be used by race tracks licensed by the Kentucky Horse Racing Commission to report liability for the pari-mutuel tax and to report admissions to the race track.

Section 12. Transient Room Tax - Required Form. Revenue Form 73A850, Transient Room Tax Monthly Return, shall be used by all persons, companies, corporations, groups or organizations doing business as motor courts, motels, hotels, inns, tourist camps, or like or similar accommodations businesses (excluding campgrounds) to report the taxable rent amount and transient room tax liability.

Section 13. Utility Gross Receipts License Tax - Required Forms. (1) Revenue Form 73A901, Utility Gross Receipts License Tax Return, shall be used by UGRLT account number holders to report total gross receipts, school district allocation, and tax liability.

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(2) Revenue Form 73A901(I), Instructions for Utility Gross Receipts License Tax Return, shall be used by UGRLT account number holders to complete the Utility Gross Receipts License Tax Return.

(3) Revenue Form 73A902, Utility Gross Receipts License Tax (UGRLT) Energy Exemption Annual Return, shall be used by UGRLT account number holders to apply for an exemption from the utility gross receipts license tax.

(4) Revenue Form 73F010, Utility Gross Receipts License Tax, shall be used by utility providers, Energy Direct Pay (EDP) holders, and consumers for instruction on how to register and file monthly reports.

Section 14. Waste Tire Tax - Required Form. Revenue Form 73A051, Motor Vehicle Tire Fee Report shall be used by businesses making retail sales of new motor vehicle tires to report liability for motor vehicle tire fees and to report the number of waste tires received from customers.

Section 15. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Alcoholic beverage tax - referenced material:

1. Revenue Form 73A504, "Acknowledgment of Tax Liability on Imported Alcoholic Beverages", November 2006;
2. Revenue Form 73A525, "Monthly Report of Distillers, Rectifiers or Bottlers", November 2007;
3. Revenue Form 73A526, "Wholesaler's Monthly Distilled Spirits Tax Report", January 2007;
4. Revenue Form 73A527, "Wholesaler's List of Individual Spirits Shipments Acquired", November 2006;
5. Revenue Form 73A529, "Consignor's Report of Alcoholic Beverages Shipped", January 2007;
6. Revenue Form 73A530, "Consignor's Report of Alcoholic Beverages Shipped", November 2006;
7. Revenue Form 73A531, "Transporter's Report of Alcoholic Beverages Delivered", January 2007;
8. Revenue Form 73A535, "Report of Destruction of Alcoholic Beverages", December 2006;
9. Revenue Form 73A575, "Wholesaler's Monthly Wine Tax Report", January 2007;
10. Revenue Form 73A576, "Vintner's Wine Report", April 2007;
11. Revenue Form 73A577, "Wholesaler's List of Individual Wine Shipments Acquired", November 2006;
12. Revenue Form 73A626, "Brewer's Monthly Report Schedule", November 2006;
13. Revenue Form 73A627, "Beer Distributor's Monthly Report", December 2006;
14. Revenue Form 73A628, "Distributor's Monthly Malt Beverage Excise Tax and Wholesale Sales Tax Report", November 2006; and
15. Revenue Form 73A629, "Beer Distributor's Sales to Federal Agencies", November 2006;

(b) Bank franchise tax - referenced material:

1. Revenue Form 73A800, "Kentucky Registration Application for Bank Franchise Tax", January 2010[2009];
2. Revenue Form 73A801(P), "2009[2008] Kentucky Bank Franchise Tax Forms and Instructions", January 2010[2009];
3. Revenue Form 73A801, "Bank Franchise Tax Return", January 2010[2009]; and
4. Revenue Form 73A802, "Application for 90-Day Extension of Time to File Kentucky Bank Franchise Tax Return", January 2010[2009];

(c) Cigarettes tax - referenced material:

1. Revenue Form 73A181, "Cigarette Licenses and Other Tobacco Product Account Number Application", June 2010[December 2006];
2. Revenue Form 73A190, "Cigarette License", December 2006;
3. Revenue Form 73A404, "Cigarette Tax Stamps Order Form", April 2009;
4. Revenue Form 73A406, "Cigarette Tax Credit Certificate", March 2009;
5. Revenue Form 73A409, "Cigarette Evidence/Property Re-

ceipt", November 2003;

6. Revenue Form 73A420, "Monthly Report of Cigarette Wholesaler", August 2006;

7. Revenue Form 73A420(I), "Instructions for Monthly Report of Cigarette Wholesaler", June 2002;

8. Revenue Form 73A421, "2009 Inventory Floor Tax for Cigarettes, Other Tobacco Products (OTP), and Snuff for Inventories as of March 31, 2009", March 2009;[~~"Cigarette Inventory Floor Tax for Inventories as of May 31, 2005", May 2005;~~]

9. Revenue Form 73A421A, "2009 Inventory Floor Tax for Cigarettes, Other Tobacco Products (OTP), and Snuff", March 2009;

10. Revenue Form 73A421B, "2009 Inventory Floor Tax for Cigarettes, Other Tobacco Products (OTP), and Snuff", March 2009;

11. Revenue Form 73A421W, "2009 Inventory Floor Tax for Cigarettes, Other Tobacco Products (OTP), and Snuff", March 2009;

12. Revenue Form 73A422, "Monthly Report of Other Tobacco Products and Snuff", April 2009;

13. Revenue Form 73A423, "Monthly Report of Cigarette Papers", June 2006; and

14. Revenue Form 73B401, "Cigarette Tax Credit Claim Wholesaler's Affidavit", March 2009;

(d) Health care provider tax - referenced material:

1. Revenue Form 73A060, "Health Care Provider Tax Return", July 2005;

2. Revenue Form 73A060(I), "Instructions - Kentucky Health Care Provider Tax Return", July 2005; and

3. Revenue Form 73A061, "Kentucky Health Care Provider Application for Certificate of Registration", December 2006;

(e) Inheritance tax - referenced material:

1. Revenue Form 92A101, "Kentucky Nonresident Inheritance and Estate Tax Return", May 1995;

2. Revenue Form 92A110, "Real Estate Data Report", May 1995;

3. Revenue Form 92A120, "Kentucky Resident Inheritance and Estate Tax Return", May 1995;

4. Revenue Form 92A120-S, "Inheritance and Estate Tax Return-Short Form", May 1995;

5. Revenue Form 92A120-X, "Kentucky Spousal Inheritance Tax Return", October 1992;

6. Revenue Form 92A121, "Acceptance of Inheritance and Estate Tax Return", July 2010[March 2008];

7. Revenue Form 92A200, "Kentucky Inheritance and Estate Tax Return", July 2003;

8. Revenue Form 92A200PKT, "Kentucky Inheritance and Estate Tax Forms and Instructions", August 2010[October 2008];

9. Revenue Form 92A201, "Kentucky Inheritance Tax Return No Tax Due", July 2003;

10. Revenue Form 92A202, "Kentucky Estate Tax Return", July 2003;

11. Revenue Form 92A204, "Real Estate Valuation Information Form", July 2003;

12. Revenue Form 92A205, "Kentucky Inheritance Tax Return (Simplified Format)", July 2003;

13. Revenue Form 92A928, "Election to Defer the Payment of Inheritance Tax Through Installments", July 2003;

14. Revenue Form 92A929, "Notice of Agricultural and Horticultural Inheritance Tax Lien", March 1991;

15. Revenue Form 92A930, "Certificate of Release of Agricultural and Horticultural Inheritance Tax Lien", March 1990;

16. Revenue Form 92A931, "Certificate of Partial Discharge of the Agricultural and Horticultural Inheritance Tax Lien", July 1983;

17. Revenue Form 92A932, "Receipt of Inheritance and Estate Taxes", March 2008;

18. Revenue Form 92A936, "Election to Qualify Terminable Interest Property and/or Power of Appointment Property", May 1995;

19. Revenue Form 92F001, "Inheritance Tax Lien Releases and Inventory of Safe Deposit Boxes", July 2010[March 2008]; and

20. Revenue Form 92F101, "A Guide to Kentucky Inheritance and Estate Taxes", March 2003;

(f) Insurance tax - referenced material:

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1. Revenue Form 74A100, "Insurance Premiums Tax Return", December 2008;
2. Revenue Form 74A101, "Insurance Premiums Tax Return - Domestic Mutual, Domestic Mutual Fire or Cooperative and Assessment Fire Insurance Companies", January 2008;
3. Revenue Form 74A105, "Unauthorized Insurance Tax Return", January 2008;
4. Revenue Form 74A106, "Insurance Premiums Tax Return - Captive Insurer", January 2008;
5. Revenue Form 74A110, "Kentucky Estimated Insurance Premiums Tax for Calendar year 2009", December 2008;
6. Revenue Form 74A116, "Tax Election for Domestic Life Insurance Companies", December 1998;
7. Revenue Form 74A117, "Monthly Insurance Surcharge Report - Domestic Mutual, Cooperative and Assessment Fire Insurer", January 2008; and
8. Revenue Form 74A118, "Monthly Insurance Surcharge Report", March 2010~~January 2008~~;

(g) Legal process - referenced material:

1. Revenue Form 73A200, "County Clerk's Monthly Report of Legal Process Tax Receipts", November 2006; and
2. Revenue Form 73A201, "Quarterly Report of Affordable Housing Trust Fund Fee", June 2006;

(h) Marijuana and controlled substance - referenced material:

1. Revenue Form 73A701, "Instructions for Affixing Marijuana and Controlled Substance Tax Evidence (Stamp)", November 2006;
2. Revenue Form 73A702, "Notice of Tax Lien KRS 138.870 Marijuana and Controlled Substance Tax", November 2006; and
3. Revenue Form 73A703, "Marijuana or Controlled Substance Stamp Order Form", November 2006;

(i) Motor fuels - referenced material:

1. Revenue Form 72A004, "Motor Fuels Tax Watercraft Refund Bond", August 2006;
2. Revenue Form 72A005, "Application for Approval to Sell Watercraft Refund Motor Fuels - Public Boat Dock", April 2009;
3. Revenue Form 72A006, "Motor Fuel Tax Refund Application - Public Boat Dock", December 2009~~April 2009~~;
4. Revenue Form 72A010, "Motor Fuel Tax Refund Permit Holder's Bond", October 2006;
5. Revenue Form 72A011, "Petroleum Storage Tank Environmental Assurance Fee Monthly Report", October 2006;
6. Revenue Form 72A052, "Kentucky Motor Fuels Tax Refund Permit", July 2007;
7. Revenue Form 72A053-A, "Application for Refund of Kentucky Motor Fuel Tax Paid on Nonhighway Motor Fuels", July 2007;
8. Revenue Form 72A065, "Aviation Gasoline Tax Refund Bond", October 2006;
9. Revenue Form 72A066, "Application for Refund of Kentucky Tax Paid on Gasoline Used in Operation of Aircraft", April 2009;
10. Revenue Form 72A067, "Application for Approval to Receive a Refund of Aviation Motor Fuels", April 2009;
11. Revenue Form 72A071, "Motor Fuels Tax Refund Bond (City and Suburban Bus, Nonprofit Bus, Senior Citizen Transportation, or Taxicabs)", October 2006;
12. Revenue Form 72A072, "Application for Motor Fuel Refund - City and Suburban Bus Companies, Nonprofit Bus Companies, Senior Citizen Transportation, and Taxicab Companies", August 2005;
13. Revenue Form 72A073, "Application for Approval to Receive a Refund of Tax on Motor Fuels Consumed by City and Suburban Buses, Nonprofit Buses, Senior Citizen Transportation, and Taxicabs", April 2009;
14. Revenue Form 72A078, "Statement of Claim for Accountable Loss of Motor Fuel", October 2006;
15. Revenue Form 72A089, "Licensed Gasoline Dealer's Monthly Report", July 2007;
16. Revenue Form 72A098, "Transporter's Report of Motor Fuel Delivered", July 2007;
17. Revenue Form 72A099, "Transporter's Report", July 2007;
18. Revenue Form 72A110, "Certification of Motor Fuels Non-highway Use", December 2005;
19. Revenue Form 72A135, "Application for Kentucky Motor

Fuels Tax Refund Permit", April 2009;

20. Revenue Form 72A138, "Licensed Special Fuels Dealer's Monthly Report", July 2007;
21. Revenue Form 72A161, "Monthly Report Liquefied Petroleum Gas Dealer", July 2007;
22. Revenue Form 72A170, "Monthly Terminal Report", July 2007;
23. Revenue Form 72A178, "Distributor's Schedule of Disbursements", July 2007;
24. Revenue Form 72A179, "Distributor's Schedule of Receipts" July 2007;
25. Revenue Form 72A180, "Schedule 15A-Terminal Operator Schedule of Receipts", July 2007;
26. Revenue Form 72A181, "Schedule 15B-Terminal Operator Schedule of Disbursement", July 2007;
27. Revenue Form 72A300, "Tax Registration Application for Motor Fuels License", December 2009~~April 2008~~;
28. Revenue Form 72A301, "Motor Fuels License Bond", October 2006;
29. Revenue Form 72A302, "Motor Fuels License", July 2007;
30. Revenue Form 72A303, "Election Application/Cancellation Form", September 2006; and
31. Revenue Form 72A304, "Motor Fuel Tax Electronic Filing Application", December 2007.

(j) Motor vehicle usage tax - referenced material:

1. Revenue Form 71A010, "Motor Vehicle Usage Tax - Vehicle Condition Refund Application" August 2006;
2. Revenue Form 71A100, "Affidavit of Total Consideration Given for a Motor Vehicle", August 2006;
3. Revenue Form 71A101, "Motor Vehicle Usage Tax Multi-Purpose Form", April 2005;
4. Revenue Form 71A102, "Questionnaire", August 2000;
5. Revenue Form 71A174, "County Clerk's Adjusted Recapitulation of Motor Vehicle Usage Tax - Weekly Report", June 1991;
6. Revenue Form 71A174-A, "County Clerk's Recapitulation of Motor Vehicle Usage Tax - Interim Report", June 1991;
7. Revenue Form 71F004, "Motor Vehicle Usage Tax - Loaner-Rental Program", March 2006;
8. Revenue Form 72A007, "Affidavit of Nonhighway Use", July 2009~~July 2007~~;
9. Revenue Form 73A054, "Kentucky Application for Dealer Loaner/Rental Vehicle Tax", August 2006;
10. Revenue Form 73A055, "Monthly Report for Dealer Loaner/Rental Vehicle Tax", January 2010~~January 2005~~; and
11. Revenue Form 73A070, "Motor Vehicle Usage Tax Request for Extension of Reports, Deposit and/or ACH Call-in", January 2009;

(k) Racing taxes - referenced material: Revenue Form 73A100, "Race Track Pari-Mutuel and Admissions Report", July 2010~~December 2006~~;

(l) Transient room tax - referenced material: Revenue Form 73A850, "Transient Room Tax Monthly Return", April 2005;

(m) Utility gross receipts license tax - referenced material:

1. Revenue Form 73A901, "Utility Gross Receipts License Tax Return", August 2005;
2. Revenue Form 73A901(l), "Instructions for Utility Gross Receipts License Tax Return", January 2006;
3. Revenue Form 73A902, "Utility Gross Receipts License Tax (UGRLT) Energy Exemption Annual Return", December 2008; and
4. Revenue Form 73F010, "Utility Gross Receipts License Tax", March 2005; and

(n) Waste tire tax - referenced material: Revenue Form 73A051, "Motor Vehicle Tire Fee Report", March 2005.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40620, or at any Kentucky Department of Revenue Taxpayer Service Center, Monday through Friday, 8 a.m. to 5 p.m.

THOMAS B. MILLER., Commissioner

APPROVED BY AGENCY: August 11, 2010

FILED WITH LRC: August 12, 2010 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed amended administrative regulation

shall be held on September 23, at 10 a.m. to noon in Room 386, Capitol Annex Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the required date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 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 noted below.

CONTACT PERSON: DeVon Hankins, Policy Advisor, Office of General Counsel, Finance and Administration Cabinet, 392 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-6660, fax (502) 564-9875.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DeVon Hankins, Policy Advisor

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required revenue forms used in the administration of miscellaneous taxes by the Department of Revenue other than Income Taxes, Sales and Use Tax, Telecommunications Excise and Gross Revenues Tax, Severance Taxes and Property Taxes.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order for the Department of Revenue to meet the requirements of KRS 13A.110 which requires that forms required to be submitted by a regulated entity shall be included in an administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required revenue forms used in the administration of miscellaneous taxes by the Department of Revenue other than Income Taxes, Sales and Use Tax, Telecommunications Excise and Gross Revenues Tax, Severance Taxes and Property Taxes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation incorporates by reference the required forms administered by the Department of Revenue used in the administration of miscellaneous taxes other than Income Taxes, Sales and Use Tax, Telecommunications Excise and Gross Revenues Tax, Severance Taxes and Property Taxes.

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

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Kentucky taxpayers and their representatives will be affected by the listing of forms administered by the Department of Revenue in an administrative regulation. Local government will be affected to the extent they utilize forms administered by the Department of Revenue. The Department of Revenue will be affected to the extent that it administers the referenced forms.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. All entities identified in question (3) shall use the forms listed in this regulation for tax compliance purposes.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Consistency in compliance with the statutes.

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

(a) Initially: The Department of Revenue will not incur additional costs as the result of this regulation.

(b) On a continuing basis: The Department of Revenue will not incur additional costs as the result of this regulation.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied because the requirements of this regulation apply to every taxpayer.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue, Office of Sales and Excise Taxes, Division of Miscellaneous Taxes, Road Fund Branch, Miscellaneous Tax Branch, Motor Vehicle Usage Tax Section, Motor Fuels Tax Audit Section, Motor Fuels Tax Compliance, Finance Tax Section, and the Excise Tax Section. The section level shall be responsible for creation and updating of forms.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(1)

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

(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 change.

(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 change.

(c) How much will it cost to administer this program for the first year? The administrative cost will be absorbed in the normal operating cost of the department.

(d) How much will it cost to administer this program for subsequent years? The same administrative cost will be absorbed in the normal operating budget of the department.

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 for Local Government
(Amendment)**

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

RELATES TO: KRS 42.495, 43.070, 46.010, 46.020, 64.810, 64.840, 64.850, ~~65.117[65.7749]~~, 65.900-65.925, 65.944, 66.045, 66.480, 67.075-67.077, 68.020, 68.210, 68.245, 68.250, 68.275, 68.280, 68.300, 686.350, 68.360, 91A.040(6), 132.010, 132.0225, 132.585, 149.590, 424.220, 424.230, 424.260, 441.135, 441.215, 441.235

STATUTORY AUTHORITY: KRS 46.010, ~~65.117, 66.045(2)(a)~~, 68.210

NECESSITY, FUNCTION, AND CONFORMITY: KRS 46.010, ~~65.117, 66.045(2)(a)~~, and 68.210 require uniform minimum requirements relating to budgeting, reporting and recordkeeping for debt, receipts, and disbursements for local governments and local government officials handling public funds. This administrative regulation establishes the standards for budgeting, reporting, and recordkeeping for debt, receipts, and disbursements for local governments and local government officials handling public funds.

Section 1. Applicability. (1) The County Budget Preparation and State Local Finance Officer Policy Manual contains, in part, a uniform system of accounts which shall be followed by all county officials.

(2) The County Budget Preparation and State Local Finance Officer Policy Manual also prescribes a uniform system of accounting and reporting on the receipt, use, and handling of public funds, other than taxes, due and payable to the state from county, district, and other local officers and agencies.

(3) The County Budget Preparation and State Local Finance Officer Policy Manual is partially advisory in nature to all local government officials since, pursuant to KRS 68.210, the accounts and operations of all local government officers are subject to examination by the State Local Finance Officer.

Section 2. Incorporation by Reference. (1) The "County Budget Preparation and State Local Finance Officer Policy Manual", January 2011, ~~October 2007~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Local Government, ~~Governor's Office for Local Development~~, 1024 Capital Center Drive, Suite 340, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

TONY WILDER, Commissioner

APPROVED BY AGENCY: August 12, 2010

FILED WITH LRC: August 12, 2010 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held Thursday, September 23, 2010, at 2 p.m. at the Department for Local Government, 1024 Capital Center Drive #340, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 4:30 pm on Thursday, September 16, 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 September 30, 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: Andrew S. Hartley, Staff Attorney, Department for Local Government, 1024 Capital Center Drive, Suite 340, Frankfort, Kentucky 40601, phone (502) 573-2382, fax (502) 573-2939.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Andrew S. Hartley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the framework for county budget and financial practices and local government debt reporting/approval.

(b) The necessity of this administrative regulation: The State Local Debt Officer is required to prescribe a uniform system of accounting and reporting on the receipt, use, and handling of public funds, other than taxes, due and payable to the state from county, district, and other local officers and agencies.

(c) How does this administrative regulation conform to the content of the authorizing statutes: The regulation establishes the required uniform system of accounting and reporting.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the framework for the county financial reporting that is required by statute.

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

(a) How the amendment will change this existing administrative regulation: The material incorporated by reference is being updated to reflect changes in the law and changes deemed necessary or beneficial by the State Local Finance Officer.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary due to changes in various statutes during the past three years.

(c) How the amendment conforms to the content of the authorizing statutes: The material incorporated by reference updates the existing regulation which concerns budgetary and reporting requirements.

(d) How the amendment will assist in the effective administration of the statutes: The administrative regulation aims at simplicity and understandability, while providing public accountability.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All counties, cities, and special districts.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional actions are required. The manual provides guidance to the counties as to their already existing duties and responsibilities. The debt reporting requirements for all local governments have been clarified and revised to reflect statutory changes.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Local governments will presumably save time as a result of the improved Manual.

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

(a) Initially: Cost of printing materials, (TBD).

(b) On a continuing basis: None

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation and enforcement of this administrative regulation is the existing budget of the Department for Local Government.

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

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

(9) TIERING: Is tiering applied? Tiering is not appropriate because this administrative regulation clarifies and establishes only

the minimum requirements for county governments and debt reporting for local governments.

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? Counties. All local governments affected by debt reporting and portions.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 46.010, 65.117, 65.944, 66.045, 68.210.

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

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

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

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

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

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

Board of Licensure for Professional Engineers and Land Surveyors (Amendment)

201 KAR 18:150. Standards of practice.

RELATES TO: KRS 322.290(1)(a), (2)(f)

STATUTORY AUTHORITY: KRS 322.290(2)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322.290(1)(a) authorizes the board to administer KRS Chapter 322. KRS 322.290(2)(f) requires the board to establish standards of practice. This administrative regulation establishes standards of practice for professional land surveyors in Kentucky.

Section 1. Definitions. (1) "Boundary" means the perimeter of a parcel or tract of land.

(2) "Boundary survey" means a survey to:

(a) Determine either the entire perimeter of a parcel or tract of land, or a portion of the perimeter of a parcel or tract of land; or

(b) Establish or reestablish a parcel or tract of land's corner or monument; or

(c) Divide or consolidate the parcels or tracts of land surveyed.

(3) "Completion Date of Survey" means the last date when all the monuments were either found or set for the plat of survey area.

(4) "Corner" means a point that designates a change in the direction of the boundary.

(5) "Field work" means that work performed by a land surveyor on the ground in connection with the parcel or tract being surveyed.

(6) "GIS" means Geographic Information System and is any system that captures, stores, analyzes, manages, and presents data that are linked to a land location and is the merging of cartography and database technology.

(7) "GNSS" means Global Navigation Satellite Systems. The standard generic term for satellite navigation systems that provide

autonomous geo-spatial positioning with global coverage.

(8) "GPS" means the United States NAVSTAR Global Positioning System, a space-based global navigation satellite system that when used in conjunction with suitable GPS receivers and processing software, provides reliable location information to the level of precision specified in this administrative regulation, in all weather and at all times and anywhere on the earth where there is an unobstructed line of sight to four (4) or more GPS satellites. It is maintained by the United States government and is freely accessible by anyone with a GPS receiver.

(9) "Meander point" means a survey point or station marking a change in direction along a linear feature such as a watercourse, ridge, road, or cliff.

(10) "Monument" means an artificial, manmade or natural object that is used as, or presumed to occupy, any of the following locations:

(a) A property corner;

(b) A point on the boundary; or

(c) A reference point.

(11) "Plat" means any representational drawing created by a land surveyor reflecting work falling within the definition of land surveying.

(12) "Plat of survey" means a finished drawing of a completed survey of a parcel or tract of land, used to depict the final results of a boundary survey, drawn on a dimensionally stable media suitable for reproduction of copies.

(13) "Point on Line" means a point on a boundary line other than a corner.

(14) "Reference monument" means a monument:

(a) That does not occupy the same defined position as a property corner; and

(b) Whose relationship to the corner of the property is established by bearing and distance to the actual corner.

(15) "Relative Positional Accuracy" means the value expressed in feet that represents the uncertainty due to random errors in measurements in the location of any point on a survey relative to any other point on the same survey at the 95 percent confidence level.

(16) "Retracement survey" means a boundary survey of an existing parcel or tract of land.

Section 2. Application. (1) Boundary surveys. The standards of practice established in Sections 1 through 12 of this administrative regulation:

(a) Shall apply to the work product related to:

1. Boundary surveys used for the purpose of creating, depicting, or locating interests in land; and

2. Partial surveys; and

3. Boundary surveys of leases; and

4. Deed descriptions written by professional surveyors.

(b) Shall be the minimum standards of practice for a professional land surveyor; and

(c) Shall not limit the establishment of more stringent standards of practice for a professional land surveyor by:

1. An agency;

2. An owner;

3. A contract; or

4. The professional land surveyor.

(d) Shall not apply to surveys to determine or define political areas such as historical, school, fire, voting, utility or magisterial districts, municipal or county limits, or governmental permit limits.

(2) Land surveying work other than boundary surveys. The standards of practice established in Sections 1, 2, 3, and 13 of this administrative regulation:

(a) Shall apply to the work of the professional land surveyor falling within the definition of land surveying, but not falling within the definition of a boundary survey; and

(b) Shall be the minimum standards of practice for a professional land surveyor for such work; and

(c) Shall not limit the establishment of more stringent standards of practice for a professional land surveyor by:

1. An agency;

2. An owner;

3. A contract; or

4. The professional land surveyor.

Section 3. Compliance. (1) Failure to comply with this administrative regulation shall constitute misconduct, gross negligence, incompetence, or a combination of these violations in the practice of professional land surveying.

(2) A professional land surveyor shall not represent that:

(a) A boundary survey determines land ownership; or

(b) A boundary survey provides more than evidence of rights in land; or

(c) Land ownership can be established by any survey

Section 4. Actual Boundary Survey. (1) The marks and monuments on the ground as found and verified, or as set by a professional land surveyor shall constitute the actual boundary survey.

(2) Any plat of survey shall accurately represent the actual boundary survey.

(3) Record research and field work required by the provisions of this administrative regulation:

(a) Shall be used by a professional land surveyor to determine the location of the boundary of the property to be surveyed; and

(b) Shall not be used by a professional land surveyor to determine title.

Section 5. Record Research. In performing a boundary survey, a professional land surveyor shall conduct research to obtain and evaluate the following:

(1) The present and relevant historical record descriptions of:

(a) Each parcel to be surveyed; and

(b) Each adjoining parcel;

(2) The description of the physical monument that represents each property corner;

(3) All other relevant documents of record including deeds and prior plats and surveys;

(4) All other relevant public agency records including tax maps, GIS maps, and topographic maps; and

(5) Any other available data or documents pertinent to the boundary survey.

Section 6. Field Work. A professional land surveyor shall thoroughly:

(1) Search for the physical monuments that represent each boundary corner;

(2) Search for other physical monuments set out in the description of the parcel or tract of land being surveyed;

(3) Gather, analyze, and document evidence of occupation and physical evidence;

(4) Gather, analyze, and document relevant parcel evidence; and

(5) Compare evidence discovered by field work, with that discovered by record research, to determine or reestablish the boundary of the tract or parcel of land being surveyed.

Section 7. Measurement Specifications. (1) Every measurement made as a part of a boundary survey shall comply with the following:

(a) The standards for accuracy and precision established by the provisions of this section; or

(b) Standards for accuracy and precision that exceed the standards established by the provisions of this section but are:

1. Requested by the client;

2. Required by contract;

3. Required by the agency or entity to which the plat of survey is to be presented; or

4. Deemed desirable or necessary by the land surveyor.

(2) A professional land surveyor shall conduct measurements with instruments and equipment that are properly:

(a) Adjusted;

(b) Maintained; and

(c) Calibrated to meet the appropriate tolerance required for the classification of survey as specified in subsection (5) of this section.

(3) A boundary survey shall be conducted utilizing a method of measurement that achieves the appropriate minimum tolerance

specified in subsection (5) of this section.

(4) A boundary survey for platting or describing a parcel or tract of land shall be classified as "Urban" or "Rural".

(a) An Urban survey shall:

1. Consist of urban or suburban land; and

2. Include a parcel or tract of land lying within, or adjacent to:

a. A city or town limit;

b. A commercial business area;

c. An industrial area; or

d. A residential area that is outside a city or town limit and contains subdivided lots smaller than five (5.0) acres.

(b) A Rural survey shall apply to all land not classified as "Urban".

(5) Table of Specifications by Class: Classification of Surveys.

	Urban	Rural	Remarks
Unadjusted Closure (Minimum)	1:10,000	1:5,000	Loop or Between Control Monuments
Angular Closure (Maximum)	15" N	30" N	N = Number of Angles in Traverse
Accuracy of Distances	+/-0.05'+100 PPM	+/-0.10'+200 PPM	100PPM=1:10,000
Relative Positional Accuracy	+/-0.05'+100 PPM	+/-0.10'+200 PPM	

Section 8. Global Positioning Systems. (1) It shall be acceptable practice to incorporate the use of survey grade GPS equipment into any boundary survey. The accuracy and precision of all measurements made with such equipment must, at a minimum, meet all other accuracy and precision standards required otherwise by law or rules under subsection 5 of Section 7 herein. When using GPS equipment in the course of a boundary survey, the professional land surveyor shall state on the face of the plat of survey, the following:

(a) A note stating what portion (or all) of the boundary survey was performed using GPS equipment.

(b) The type of GPS equipment used, including manufacturer and model number, and whether single or dual frequency receivers were used.

(c) The type of GPS survey that was performed, such as static, real time kinematic ("RTK"), network adjusted real time kinematic, etc., and

(d) A note that discloses the precision of the GPS work done, either in relative positional accuracy, or vector closure.

(e) A statement identifying the horizontal datum, the vertical datum, and the Geoid model used.

(2) The professional land surveyor shall at a minimum retain adequate documentation, in either paper or electronic format, of raw field data, adjustment calculations and closure, or relative positional accuracy calculations or computations necessary to support the accuracy and precision of the work product.

Section 9. Monumentation. (1) Monumentation standards established in this section shall apply to all boundary surveys:

(2) Unless an adequate monument already exists at each boundary parcel corner, a professional land surveyor shall set a monument or a reference monument at each corner of the boundary as provided in this section.

(3) A monument or reference monument set by a professional land surveyor shall conform to the following categories and shall meet the following criteria:

(a) "Typical and Preferred" an iron rod, iron pipe, or iron pin that is:

1. Not less than one-half (1/2) inch in diameter and eighteen (18) inches in length; and

2. Equivalent to, or greater than, schedule-forty (40) weight if pipe is utilized; and

3. Identified with a cap bearing the license number of the professional land surveyor under whose direct supervision the survey was performed, and which cap does not display any other license number.

(b) "Non-typical" to be used only when it is not practical to set

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the monuments described in subsection (a) of this subsection, and that:

1. Preferably contains a ferrous material or is otherwise capable of being located with a magnetic locator, and may include P. K. or mag nails at least one 1 1/2 and one-half inches in length; and

2. Is identified with the license number of the professional land surveyor under whose direct supervision the survey was performed, and does not display any other license number.

(c) "Alternate" to be used only when it is not practical to set the monuments described in subsections (a) and (b) of this subsection and may include railroad spikes, mine spikes, cross-cuts, chisel cuts, drill holes and curb notches, and must be referenced to a durable, physical feature.

(4) A boundary corner shall be identified by a reference monument if it is impractical to set a monument at the corner for either of the following reasons:

(a) The corner is likely to be disturbed; or

(b) The corner is inaccessible.

(5) A reference monument shall be set on the boundary line, if practicable, to perpetuate the location of each corner.

(6) A professional land surveyor shall set each monument in a manner to avoid or minimize the likelihood of its destruction.

(7) A professional land surveyor may use a tree as a monument under the following conditions:

(a) A tree may be established as a corner monument only on a Rural boundary survey. Each tree utilized as a monument shall be marked in a conspicuous manner that is both physical and permanent and will not otherwise be harmful to the tree.

(b) A tree that a professional land surveyor establishes as a corner monument shall meet the following criteria:

1. Be at least ten (10) inches in diameter at breast height;

2. Be in sound condition;

3. Be marked in a conspicuous manner that is both physical and permanent; and

4. Be clearly described by size, species, and method of marking, on the plat and in the written description.

(c) Trees shall not constitute more than fifty (50) percent of the established monuments for a rural boundary survey.

(d) For an urban retracement survey in which a tree is found to be the monument of record, the tree shall be reference-monumented.

(8) A corner monument that a professional land surveyor has determined is not of sound condition, fails to meet the standards established in this administrative regulation, or is inadequate under the definition of monument within this administrative regulation, shall be reference-monumented to perpetuate the corner location. All existing record monuments discovered during the performance of the survey shall be preserved and shall not be altered or destroyed.

(9) Linear monuments may consist of a watercourse, ridge, road, or cliff, and:

(a) The point at which a boundary line intersects a linear monument shall be monumented or reference monumented; and

(b) A physical feature that represents a linear monument shall be monumented or reference monumented at a minimum of every 1,000 feet, and those monuments shall be set in intra-visible pairs not to exceed one thousand feet in spacing between pairs.

(10) All monumentation shall be set prior to the time the plat of survey, or record plat is issued by the surveyor. The signing and sealing of a survey plat is certification by the professional land surveyor that all corners shown on the plat are set on the ground.

Section 10. Documentation of Boundary Surveys. (1) A plat of survey shall be required to be given to the client when the professional land surveyor does any of the following:

(a) Surveys a new boundary line; or

(b) Retraces the boundary lines of a previously established boundary; or

(c) Determines that the current physical description or plat does not accurately depict the actual conditions found during the course of performing the survey.

(2) A professional land surveyor shall retain as permanent records the original plat of survey prepared by the land surveyor, or a copy thereof, and a copy of any new physical description that

was prepared from the survey.

(3) A professional land surveyor shall retain as permanent records the following items used to perform a boundary survey:

(a) Research documents including notations stating the source of each;

(b) Field and office notes;

(c) Electronic and magnetically stored field data;

(d) Documents of calculation stating the:

1. Relative positional accuracy or closure as required by Section 7 of this administrative regulation;

2. Adjustment method;

3. Bearing reference datum;

4. Determination of corners;

(e) Plat of survey and written description, if any, of the surveyed parcel or tract of land; and

(f) All other pertinent information necessary to reproduce the boundary survey; and

(g) All other pertinent information supporting the location of the boundary lines and corners of the boundary survey.

(4) Written description. A written description prepared by a professional land surveyor shall be complete, shall accurately describe the actual boundary survey, and at a minimum, contain the following information:

(a) The general location of the land that was surveyed;

(b) The specific location of the land in reference to a major physical feature or recognized control network;

(c) The reference of at least one (1) boundary corner to a corner of the parent tract;

(d) The direction and length of each line, as follows:

1. Each bearing represented in degrees, minutes and seconds with each distance represented to the hundredths of a foot; and

2. Any geometrically-curved line identified with a beginning point, terminus point, and sufficient curve data to define the curve; and

3. A description of each prominent terrain feature, if any, that the boundary follows;

(e) A notation as to whether each monument was found or set.

(f) The identification of each tree utilized as a new corner monument, including breast height diameter, species of tree, method of marking, and a notation whether the tree is a record monument or a newly established monument.

(g) A complete description of each "set" monument, to include, if appropriate, the monument's length, diameter, type of material and the identifying cap or other identifier that was used.

(h) A complete description of each "found" monument that complies with the following:

1. It is sufficiently accurate and adequate for subsequent identification by another professional land surveyor; and

2. To the extent possible, the description shall include the monument's dimensions, type of material and the identification cap or other identifier that was used.

(i) A description of the location of any cemetery or grave site that is observable or evident during the performance of the field work, or discovered from the required research.

(j) The record source of the land surveyed and the names and record sources of all adjoining property owners;

(k) The calculated area of the land surveyed stated to the nearest hundredth of an acre.

(l) Name, certification date of the written description, license number and seal of the professional land surveyor under whose direct supervision the survey was performed, and name of the land surveying firm, if any; and

(m) Completion date of the boundary survey.

(5) Plat of survey. A plat of survey shall be drawn to scale on durable, dimensionally-stable media, and clearly contain the following information:

(a) Direction and length of each line as follows:

1. Each bearing represented in degrees, minutes, and seconds with each distance represented to the hundredths of a foot; and

2. Any geometrically-curved line identified with a beginning point, terminus point, and sufficient curve data to define the curve; and

3. A depiction of each prominent terrain feature, if any, that the boundary follows;

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(b) The calculated area of the land surveyed, stated to the nearest hundredths of an acre;

(c) A notation as to whether each monument was found or set;

(d) A complete description of each set monument that marks or references a boundary corner to include, if appropriate, the monument's length, diameter, type of material and the identifying cap or identifier that was used;

(e) A complete description of each found monument that complies with the following:

1. It is sufficiently accurate and adequate for subsequent identification by another professional land surveyor; and

2. To the extent possible, the description shall include the monument's dimensions, type of material and the identifying cap or identifier, or lack thereof;

(f) Reference of at least one (1) corner to at least one (1) of the following:

1. A corner of the parent tract;

2. A durable and recognizable physical object; or

3. A properly identified primary control network;

(g) The name of each road, along with any record source thereof;

(h) The name and record sources of each adjoiner;

(i) The name and record sources of each adjoining subdivision;

(j) Any apparent encroachment discovered in the course of the survey;

(k) The reference meridian and whether its basis is:

1. True;

2. Grid;

3. Record, including the source of the record meridian;

4. State plane; or

5. Magnetic, including the date and location of the;

(l) A vicinity map of sufficient detail to locate the parcel or tract of land being surveyed, unless the location of the parcel or tract of land is clearly shown by the plat itself;

(m) A statement, as appropriate, of:

1. The unadjusted error of closure for the traverse; and

2. The relative positional accuracy for a GPS based survey;

(n) A statement identifying the classification of the survey as rural or urban;

(o) A statement as to whether the directions and distances shown on the plat are based on an adjusted traverse;

(p) The location of a cemetery or grave site that is observable or evident during the performance of the field work or discovered from the required research;

(q) A dated signature and the seal of the professional land surveyor under whose direct supervision the boundary survey was performed;

(r) A written and graphic scale; and

(s) A title block containing the following:

1. Name and address of the client;

2. Name and address of the property owner of record;

3. Title of the survey;

4. Statement that the plat of survey represents a boundary survey and complies with 201 KAR 18:150; and

5. Name and business address of the professional land surveyor who performed the survey and, if applicable, the name and address of the surveying firm;

(t) The following information shall be placed conspicuously on the face of the plat of survey:

1. The record source of the tract or parcel of land surveyed; and

2. The location or address of each tract or parcel of land surveyed.

Section 11. Identification of Drawings and Plats. (1) A plat of survey shall be signed, sealed, and dated by the professional land surveyor under whose direct supervision the survey was performed.

(2) Working drawings or unfinished plats of not yet completed boundary surveys shall be prominently marked or stamped in at least sixteen (16) point type or its equivalent, as follows: Preliminary - Not For Recording or Land Transfer.

Section 12. Partial Boundary Surveys. (1) In performing a

boundary survey, a professional land surveyor is not required to survey the parent tract in its entirety in order to create a smaller tract for conveyance when the following conditions are met:

(a) Adequate evidence exists that conforms to the deeds of record; and

(b) Sufficient monumentation exists that is verifiable to establish the lines common to the boundary of the parent tract; and

(c) There is sufficient evidence and monumentation to establish the lines common to the adjoining tracts without adversely affecting the property interests of any adjoining owners.

(2) In performing a boundary survey, a professional land surveyor is not required to survey the entire boundary of a tract of land in order to mark a boundary line or replace a boundary corner when the following conditions are met:

(a) Sufficient evidence is found and verified to establish the record location of that portion of the boundary being surveyed; and

(b) The marked boundary line or reestablished boundary corner does not adversely affect the property interests of any adjoining owners.

(3) A plat of survey for that part of the boundary surveyed pursuant to this section of this administrative regulation, shall be required to comply with this administrative regulation for the part of the boundary that was surveyed, and must graphically delineate and designate that portion of the boundary covered by the survey.

Section 13. Plats, Drawings, and Graphic Representations of Non-Boundary Survey Work Mandatory Disclosures. (1) Plats, drawings, and graphic representations created by a professional land surveyor, not representing either a plat of survey, or a preliminary plat, drawing, or graphic representation of a boundary survey, shall meet the following criteria:

(a) Be clearly marked as to their intended use; and

(b) State affirmatively in a title block in at least twelve (12) point type or its equivalent, that the work does not represent a boundary survey and is not intended for land transfer; and

(c) May be signed and sealed by the professional land surveyor under whose direct supervision the work represented by the plat, drawing, or graphic representation was performed or the document was prepared.

(2) A professional land surveyor shall state in a note or notes, on the face of any plat, drawing or graphical representation of any work product falling within the definition of land surveying but not constituting either a plat of survey, or a preliminary plat, drawing or graphic representation of a boundary survey, the following mandatory informational disclosures for the work product:

(a) For whom and by whom the work product was created;

(b) The purpose of the work product;

(c) The method employed to create the work product and its underlying values and specifications;

(d) The location of the parcel or tract of land with which the work product is concerned;

(e) The date(s) that the work was performed;

(f) The date of any certification of the work product by the licensee;

(g) The mathematical scale employed in any graphic representation of the work performed; and

(h) The degree of accuracy or level of quality of the work product expressed in terms of mathematical precision. [Section 4. Definitions. (1) "Boundary survey" means a survey for which the primary purpose includes the:

(a) Determining of the perimeter of a parcel or tract of land;

(b) Establishing or reestablishing of a parcel corner or monument;

(c) Describing, platting, and locating each fixed improvement on the parcel surveyed; or

(d) Dividing or consolidating the parcels surveyed.

(2) "Plat of survey" means a drawing of a parcel or tract of real property used to depict the final results of a field survey.

(3) "Corner" means a point on a land boundary that designates a change in direction.

(4) "Monument" means an artificial manmade or natural object that is used as, or presumed to occupy, a:

(a) Real property corner;

(b) Point on a boundary line; or

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(c) Reference point.

(5) "Witness monument" means a monument:

(a) That does not occupy the same defined position as a corner; and

(b) Whose relationship to the corner is established.

(6) "Meander point" means a survey point or station marking a change in direction along a linear feature such as a watercourse, ridge, road, or cliff.

(7) "Reference point" means the defined position of a point that is, or can be, established in relation to the position of another defined point or points.

Section 2. The standards of practice established in this administrative regulation:

(1) Shall be the minimum standards of practice for a professional land surveyor; and

(2) Shall not limit the establishment of more stringent standards of practice for a professional land surveyor by:

(a) An agency;

(b) An owner;

(c) Contract; or

(d) The professional land surveyor.

Section 3. (1)(a) Boundary surveying in Kentucky, and a document purporting to represent a boundary survey, shall comply with the provisions of this administrative regulation.

(b) Failure to comply with this administrative regulation shall constitute misconduct, gross negligence, incompetence, or a combination of these violations in the practice of professional land surveying.

(2) A professional land surveyor shall not represent that:

(a) A boundary survey determines land ownership;

(b) A boundary survey provides more than evidence of rights in land; or

(c) Land ownership can be established by a means other than an action in a Kentucky court.

Section 4. The marks on the ground of a professional land surveyor shall constitute the actual boundary survey.

Section 5. Record Research. (1) To determine the proper description of the land to be surveyed, a professional land surveyor shall conduct research to obtain record description of:

(a) Each parcel to be surveyed; and

(b) Each adjoining parcel.

(2) A professional land surveyor shall evaluate:

(a) Historical records of the subject and each adjoining parcel;

(b) Records of:

1. Previous pertinent surveys;

2. Tax maps;

3. Topographic maps;

4. Aerial photographs; and

5. Public agency records; and

(c) Other available data pertinent to the boundary survey.

(3) A professional land surveyor shall analyze the data and make a determination of the record boundary of each parcel to be surveyed.

(4) Research required by the provisions of this administrative regulation:

(a) Shall be used by a professional land surveyor to determine the location of the parcel boundary; and

(b) Shall not be used by a professional land surveyor to determine title.

Section 6. Field Research. A professional land surveyor shall thoroughly:

(1) Search for the physical monument that represents each parcel corner;

(2) Analyze evidence of occupation;

(3) Investigate possible parole evidence supporting the position of monuments or corners;

(4) Compare evidence discovered by the field survey with the record research to establish the boundary of the land being surveyed.

Section 7. Measurement Specifications. (1) Every measurement made as a part of a boundary survey shall comply with:

(a) The standards for accuracy and precision established by the provisions of this section; or

(b) At the request of the client, standards for accuracy and precision that exceed the standards established by the provisions of this section.

(2) A professional land surveyor shall conduct measurements with instruments and equipment that are properly:

(a) Adjusted;

(b) Maintained; and

(c) Calibrated to meet the appropriate tolerance required for the classification of survey as specified in subsection (6) of this section.

(3) A boundary survey shall be conducted utilizing a method of closed traverse and the measurement of angles and distances that achieve the appropriate tolerance specified in subsection (6) of this section.

(4) A boundary survey for platting or describing a land parcel shall be classified as Class A or Class B.

(a) Class A shall:

1. Consist of urban or suburban land; and

2. Include a parcel lying within, or adjacent to:

a. A city or town limit;

b. A commercial business area;

c. An industrial area;

d. A residential area; or

e. A developing area.

(b) Class B shall:

1. Consist of rural land; and

2. Include:

a. A farm;

b. A woodland; or

c. Other land not included in Class A.

(5) The accuracy and precision of a boundary survey shall not be less than the appropriate requirements established in subsection (6) of this section.

(6) Table of Specifications by Class: Classification of Surveys.

	Class A Urban & Suburban	Class B Rural	Remarks
Unadjusted Closure (Minimum)	1:10,000	1:5,000	Loop or Between Control Monu- ments
Angular Closure (Maximum)	15" N	30" N	N = Number of Angles in Tra- verse
Accuracy of Distances	0.05' ±100 PPM	0.10' ±200 PPM	100 PPM = 1:10,000

Section 8. Monumentation. (1) In a boundary survey, a professional land surveyor shall make a determination of the boundary and corners of the parcel being surveyed.

(2) Unless an adequate monument already exists at each parcel corner, a professional land surveyor shall set a monument or a witness monument at each corner of a parcel as provided in this section.

(3) A monument or witness monument set by a professional land surveyor shall be:

(a) Made of, or contain, a ferrous material;

(b) Not less than one-half (1/2) inch in diameter and eighteen (18) inches in length;

(c) A minimum of schedule forty (40) weight if pipe is utilized; and

(d) Identified with a cap bearing the registration number of the professional land surveyor responsible for and in charge of the survey.

(4) A monument or witness monument shall be required at each corner of a boundary survey.

(5) A parcel corner shall be identified by a witness monument if a monument cannot be set because the corner:

(a) Falls upon rock, concrete, or other like material;

(b) Is likely to be disturbed; or

(c) Is inaccessible.

(6) A witness monument shall be set:

- (a) On the boundary line, if practicable; and
- (b) As close as practicable to the corner location.
- (7) A professional land surveyor shall set each monument in a manner to avoid its destruction.
- (8)(a) A tree shall not be established as a corner monument except on a rural boundary survey.
- (b) A tree that a professional land surveyor establishes as a corner monument shall be:
 1. At least ten (10) inches in diameter at breast height;
 2. In sound condition;
 3. Marked in a conspicuous manner; and
 4. Clearly described by size, species, and method of marking on the plat, and in the written description.
- (c) Trees shall not constitute more than fifty (50) percent of the established monuments for a boundary survey in a rural land classification.
- (d) For an urban or suburban survey in which a tree is found to be the monument of record, the tree shall be witness monumented.
- (9) A corner monument that a professional land surveyor has determined is not of sound condition or which fails to meet the standards established in this administrative regulation shall be witness monumented to perpetuate the corner location.
- (10) Linear monuments.
 - (a) The following distinct physical features may be utilized as a monument:
 1. A watercourse;
 2. A ridge;
 3. A road; or
 4. A cliff.
 - (b) The point at which a boundary line intersects a physical feature shall be monumented or witness monumented.
 - (c) A physical feature that represents a linear monument shall be witness monumented at a minimum of every 1,000 feet.
 - (d) A professional land surveyor shall obtain sufficient field survey data to define the position of each physical monument in order to accurately plat, describe, and calculate the area of the land being surveyed.

Section 9. Documentation. (1) The corner monuments established or reestablished by a professional land surveyor shall constitute the actual boundary survey.

(2) A professional land surveyor shall provide a plat of survey to the client upon the completion of a boundary survey in which he has:

- (a) Retraced a previously established boundary line; or
- (b) Established a new boundary line.
- (3) A professional land surveyor shall retain as permanent record the following items pertaining to a boundary survey:
 - (a) Plate;
 - (b) Written descriptions;
 - (c) Research documents;
 - (d) Field and office notes;
 - (e) Electronic and magnetically stored field data; and
 - (f) Documents of calculations stating the:
 1. Closure;
 2. Adjustment method;
 3. Bearing reference datum; and
 4. Determination of corners.
- (4) A written description prepared by a professional land surveyor for the purpose of defining a parcel boundary shall:
 - (a) Be complete;
 - (b) Accurately describe the actual boundary survey; and
 - (c) Contain the information specified in this paragraph:
 1. Captions sufficient to identify the:
 - a. General location of the land surveyed;
 - b. Specific location of the land in reference to a major physical feature, or primary control network; and
 - c. Reference of at least one (1) corner to a corner of the parent tract;
 2. The direction and length of each line, as follows:
 - a.(i) Each bearing shall be shown in degrees, minutes, seconds; and
 - (ii) Each distance shall be shown to hundredths of a foot; or
 - b. A geometrically curved line shall be identified with a begin-

- ning point, terminus point, and sufficient curve data to define the curve;
- 3. A description of each monument marking or witnessing a corner, including:
 - a. A notation as to whether found or set;
 - b. Dimensions;
 - c. Type of material; and
 - d. Identification cap;
- 4. The names and record sources of adjoining property owners;
- 5. A notation describing each prominent feature of terrain which the boundary follows;
- 6. Calculated area of the land surveyed, computed either to the nearest hundredth of an acre or square foot;
- 7. Reference to the record source of the land surveyed;
- 8. Name and registration number of the professional land surveyor who performed the survey, and name of the land surveying firm, if any;
- 9. A dated signature and the seal of the professional land surveyor responsible for and in charge of the survey; and
- 10. Date of the field survey.
- (5) A final plat of a boundary survey shall be drawn to scale on durable, dimensionally stable media, and clearly contain the following information:
 - (a) Direction and length of each line as follows:
 - 1.a. Each bearing shown in degrees, minutes and seconds; and
 - b. Each distance shown to hundredths of a foot; or
 - 2. A geometrically curved line shall be identified with a beginning point, terminus point, and sufficient curve data to define the curve;
 - (b) Calculated area of the land surveyed computed either to the nearest hundredth of an acre or nearest square foot;
 - (c) A description of each monument, which marks or witnesses a corner, including:
 1. A notation as to whether found or set;
 2. Dimensions;
 3. Type of material; and
 4. Identification cap;
 - (d) Reference of at least one (1) corner to a:
 1. Corner of the parent tract;
 2. Durable physical object; or
 3. Primary control network, such as state plane coordinates;
 - (e) 1. The name of each road;
 - 2. The name and record sources of each adjoiner; and
 - 3. The name and record sources of each adjoining subdivision;
 - (f) An apparent encroachment discovered in the course of the survey;
 - (g) The reference meridian and whether its basis is:
 1. True;
 2. Grid;
 3. Record, including the source of the record meridian;
 4. State plane; or
 5. Magnetic, including the date of the observation;
 - (h) Vicinity map of sufficient detail to locate the land being surveyed, unless the location of the property is clearly shown by the plat itself;
 - (i) A statement disclosing the unadjusted error of closure;
 - (j) A statement identifying the land classification of the parcel surveyed;
 - (k) A statement as to whether the directions and distances shown on the plat is based on an adjusted traverse;
 - (l) The location of a cemetery or grave site that is visible or discernible during the field survey or the required research;
 - (m) A dated signature and the seal of the professional land surveyor responsible for and in charge of the survey;
 - (n) A written and graphic scale; and
 - (o) A title block containing the following:
 1. Name and address of client and parcel owner;
 2. Title of the survey;
 3. Location of each parcel surveyed; and
 4. Name and address of the professional land surveyor and, if applicable, the firm that performed the survey.

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~~Section 10. Marking of Working Drawings And Unfinished Plats. (1) A working drawing or unfinished plat:~~
~~(a) Shall be marked as to its intended use; and~~
~~(b) Shall not be sealed.~~
~~(2) A marking shall be made in a manner similar to:~~
~~(a) "PRELIMINARY - NOT FOR RECORDING OR LAND TRANSFER"; or~~
~~(b) "EXHIBIT".~~

~~Section 11. Partial Boundary Survey. (1) A partial boundary survey may be conducted by a professional land surveyor if:~~
~~(a) The portion of the property being surveyed can be clearly isolated from the remainder of the property; and~~
~~(b) The interest of an adjoining owner is not affected.~~
~~(2) A plat of a partial survey shall:~~
~~(a) Comply with this administrative regulation; and~~
~~(b) Graphically delineate that portion of the boundary covered by the current survey from the remainder of the property.]~~

B. DAVID COX, Executive Director

APPROVED BY AGENCY: August 9, 2010

FILED WITH LRC: August 10, 2010 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2009 at 1:30 p.m., at 160 Democrat Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. 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 September 30, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jonathan Buckley, General Counsel, Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, phone (502) 573-2680, fax (502) 573-6687.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jonathan Buckley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation established standards for the practice of land surveying by professional land surveyors in Kentucky.

(b) The necessity of this administrative regulation: This regulation was necessary in order to establish a consistent, written set of standards for the practice of land surveying in Kentucky so that all professional land surveyors know what is expected of them in the areas addressed by the regulation. Additionally, this amendment to the existing regulation sets out standards for the use of newer technology not addressed by the existing regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 322.290(1) authorizes the board to administer KRS Chapter 322. KRS 322.290(12) requires the board to adopt appropriate standards of practice for professional land surveyors in Kentucky. This administrative regulation establishes standards of practice for professional land surveyors in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes written requirements for the practice of land surveying in Kentucky so that licensees will understand what is required of them in the areas addressed by the regulation, and board staff can enforce such requirements.

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

(a) How the amendment will change this existing administrative

regulation: It will clarify the existing regulation with regard to the requirements of performing boundary surveys, set standards for newer technology used in performing boundary surveys in Kentucky, set standards for written disclosure of work by licensees other than boundary surveys, but falling within the definition of land surveying in Kentucky.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary in order to require that standards be established and updated for the practice of land surveying in Kentucky so that licensees know what is expected of them in the performance of their work, so that the public is protected by the requirement for standards for work by the professional land surveyor, and so that standards be published for disciplinary action purposes for any failure of a licensee to meet those standards. Without this regulation, the work product delivered to the public may be meaningless, and enforcement would not be possible without a standard to measure the actions and omissions by licensees against. Established standards of performance of professional services benefit the public and enforcement of violations of those standards protect the public.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 322.290(1) authorizes the board to administer KRS Chapter 322. KRS 322.290(12) requires the board to adopt appropriate standards of practice for professional land surveyors in Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: It will allow us to more effectively investigate complaints as required by KRS 322.190.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: It will affect the approximate 1,800 licensees. However, since this is an amendment to an already existing regulation, professional land surveyors presently know that they must meet standards adopted by the board in the performance of their professional work.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have to abide by the standards adopted by the board in the performance of their work as professional land surveyors.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be little if any, additional cost involved to the licensees; the standards reflect in large measure, what competent professional land surveyors already do in the performance of their work.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees will produce a quality work product and they will be able to support their work product by the documentation required by the regulation, in the event of any enforcement action.

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

(a) Initially: \$0

(b) On a continuing basis: \$0

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased as a result of this proposed amendment.

(9) TIERING: Is tiering applied? Tiering was not used because this regulation should not disproportionately affect any particular group of people.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky State Board of Licensure for Professional Engineers and Land Surveyors

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 322.290(1) and 322.290(12).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There are no revenue or expenditure effects for any government agency. None

(a) How much revenue will this administrative regulation generate for the state or local government agency (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 agency (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? \$0

(d) How much will it cost to administer this program for subsequent years? \$0

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT CABINET
Board of Physical Therapy
(Amendment)**

201 KAR 22:020. Eligibility and credentialing procedure.

RELATES TO: KRS 164.772, 214.615(1), 327.050, 327.060, 327.070(2)(f), 327.080

STATUTORY AUTHORITY: KRS 327.040(1), (11), (13)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(11) authorizes the Board of Physical Therapy to promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of KRS Chapter 327. KRS 327.040(1) requires the board to determine ~~if whether~~ physical therapist applicants meet the qualifications and standards required by KRS Chapter 327, and 327.040(13) ~~authorizes~~allows the board to promulgate administrative regulations regarding the qualifications for physical therapist assistants. This administrative regulation establishes the criteria for eligibility, methods, and procedures of qualifying for a credential to practice physical therapy in Kentucky.

Section 1. An application shall be accepted for credentialing as a physical therapist or physical therapist assistant~~Applications shall be accepted for credentialing~~ based on successful completion by the applicant of one (1) of the following processes:

- (1) Examination;
- (2) Endorsement; or
- (3) Reinstatement.

Section 2. (1) To be eligible for the examination, the applicant shall:

(a)(4) Have successfully completed the academic and clinical requirements of a physical therapy or physical therapist assistant program accredited by CAPTE;

(b)(2) Submit certification of completion by the educational administrator of that program;

~~(c)(3)~~ Have completed an educational course at least two (2) hours in length that has been approved by the Cabinet for Health Services (CHS) on the transmission, control, treatment, and prevention of human immunodeficiency virus infection and AIDS;

(d) Have successfully completed the Jurisprudence Exam;

(e)(4) Submit a complete and notarized application for credentialing that includes a photo taken within one (1) year;

~~(f)(5)~~ Submit the correct, nonrefundable fee as required in 201 KAR 22:135;

(g) If applicable, submit on an Applicant Special Accommodations Request Form, a request for a reasonable accommodation in testing due to a documented disability~~(6) A request for a reasonable accommodation in testing due to a documented disability shall be submitted on an Applicant Special Accommodations Request Form~~; and

(h)(7) Register for the NPTE examination.

(2) After three (3) failed attempts in taking the examination, an applicant shall complete a board-approved remediation plan based on identified deficits as provided on the Federation of State Boards of Physical Therapy (FSBPT) Examination Performance Feedback report prior to registering for each subsequent examination.

Section 3. An applicant for credentialing who is registered for the examination in another jurisdiction shall:

(1) Meet the eligibility requirements of Section 2 of this administrative regulation; and

(2) Register with the ~~Federation of State Boards of Physical Therapy~~ (FSBPT) Score Transfer Service to have results submitted to Kentucky.

Section 4. To be eligible for credentialing by endorsement, the applicant shall:

(1) Meet the requirements established in Section 2(1)(a) through (f)(2)(4), (3), (4), and (5) of this administrative regulation;

(2) Have successfully completed the NPTE or its equivalent, predecessor examination and register with the FSBPT Score Transfer Service to have results submitted to Kentucky.

(a) A passing score in Kentucky for the person who took the NPTE prior to July 1, 1993, shall be at least equal to the national average raw score minus one and five-tenths (1.5) standard deviation set equal to a converted score of seventy-five (75).

(b) After July 1, 1993, a passing score shall be the criterion referenced passing point recommended by the FSBPT set equal to a scaled score of 600;

(3) Have an active credential in this profession in another jurisdiction; and

(4) Have verification of credentials showing the credential has never been revoked, suspended, on probation, or under disciplinary review in another jurisdiction.

Section 5. To be eligible for reinstatement, the applicant shall meet the requirements in 201 KAR 22:040.

Section 6. A credential issued by the board shall be in effect until March 31 of the next uneven-numbered year.

Section 7. A foreign-educated physical therapist shall comply with this administrative regulation and 201 KAR 22:070.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Credentialing", August 2010~~February 2009~~; and

(b) "Applicant Special Accommodations Request Form", February 2009.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the ~~State Board of Physical Therapy~~ Board of Physical Therapy, 312 Whittington Parkway Suite 102, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

REBECCA KLUSCH, Executive Director

APPROVED BY AGENCY: July 22, 2010

FILED WITH LRC: August 12, 2010 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 28, 2010, at 9 a.m. at 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled.

This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Becky Klusch, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, phone (502) 429-7140, and fax (502) 429-7142.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Becky Klusch, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the eligibility and application procedures for physical therapists and physical therapist assistants.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 327.040.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It provides the qualifications and procedures for applying for a license to practice physical therapy in the Commonwealth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides the qualifications and procedures for applying for a license to practice physical therapy in the Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: The amendment limits the number of times an applicant may take the national examination before a remediation plan is required and to require the Jurisprudence Examination for initial licensure.

(b) The necessity of the amendment to this administrative regulation: To ensure an applicant is qualified to take the examination and know the Kentucky statutes and regulations before practicing in the Commonwealth.

(c) How the amendment conforms to the content of the authorizing statutes: The board is authorized to set standards for licensing and renewal procedures.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will help ensure the board is protecting the public.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 300 physical therapists and physical therapist assistants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The failed candidates will need to set up a remediation plan to help them successfully pass the national examination which is a minimum requirement in protection of the public.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in ques-

tion (3): Their successful passage of the national examination will far outweigh their cost in their remedial plan.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): To become licensed to practice physical therapy.

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

(a) Initially: There will be minimal costs to the board.

(b) On a continuing basis: Minimal costs to the board.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not used in this administrative regulation because the administrative regulation applies equally to all those individuals regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Physical therapists and physical therapist assistants examination applicants.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 327.040 and 327.050.

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

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

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

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board of Physical Therapy (Amendment)

201 KAR 22:053. Code of ethical standards and standards of practice for physical therapists and physical therapist assistants.

RELATES TO: KRS 327.040, 327.070

STATUTORY AUTHORITY: KRS 327.040(11), (12), (13)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040 (12) and (13) authorize the Board of Physical Therapy to establish by administrative regulation a code of ethical standards and standards of practice for physical therapists and physical therapist assistants. This administrative regulation establishes those standards which, if violated, are a basis for disciplinary action under

KRS 327.070.

Section 1. Code of Ethical Standards. (1) Physical therapists and physical therapist assistants shall:

- (a) Respect the rights and dignity of all patients;
- (b) Practice within the scope of the credential holder's training, expertise and experience;
- (c) Report to the board any reasonably suspected violation of KRS Chapter 327 or 201 KAR Chapter 22 by another credential holder or applicant within thirty (30) days; and
- (d) Report to the board any civil judgment, settlement, or civil claim involving the credential holder's practice of physical therapy made against the credential holder relating to the credential holder's own physical therapy practice within thirty (30) days.

(2) Physical therapists and physical therapist assistants shall not:

- (a) Verbally or physically abuse a client; or
- (b) Continue physical therapy services beyond the point of reasonable benefit to the patient, unless the patient consents in writing.

Section 2. Standards of Practice for the Physical Therapist. While engaged in the practice of physical therapy, a physical therapist shall:

- (1) Perform screenings in order to:
 - (a) Provide information on a person's health status relating to physical therapy;
 - (b) Determine the need for physical therapy evaluation and treatment;
 - (c) Make a recommendation regarding a person's ability to return to work or physical activity; and
 - (d) Provide physical therapy services;
- (2) Evaluate each patient:
 - (a) Prior to initiation of treatment;
 - (b) Upon receipt of a patient from another physical therapy service, facility, or agency; and
 - (c) If requested by a referring professional;
- (3) Reassess each patient in accordance with the following:
 - (a) Reassessing inpatients in either a hospital or comprehensive rehabilitation facility every fourteen (14) days;
 - (b) Reassessing every ninety (90) days, with the physical therapist assistant present, patients in:
 - 1. A facility defined in 902 KAR 20:086 as an intermediate care facility (ICF) for the mentally retarded (MR) and developmentally disabled (DD); or
 - 2. A school system.
 - a. A forty-five (45) day grace period shall be allowed upon transfer from another school district or from the start of the school year.
 - b. During this grace period treatment may continue based upon the previous reassessment or initial evaluation;
 - c. Reassessing each patient not otherwise noted every thirty (30) days following the initial evaluation or subsequent reassessment;
 - d. Reassessing a patient whose medical condition has changed;
 - e. Refer the patient to other professionals or services if the treatment or service is beyond the physical therapist's scope of practice;
 - f. Be responsible for the physical therapy record of each patient;
 - g. Provide services that meet or exceed the generally accepted practice of the profession;
 - h. Explain the plan of care to the patient, to others designated by the patient, and to appropriate professionals;
 - i. Make it clear to the patient that the patient has the right to choose any qualified professional or equipment supplier if the physical therapist makes recommendations for those;
 - j. Disclose in writing to each patient any financial interest, compensation, or other value to be received by the referral source:
 - (a) For services provided by the physical therapist;
 - (b) For equipment rental or purchase; or
 - (c) For other services the physical therapist may recommend for the patient.

(10) Unless prohibited by law, as members of a business entity be allowed to pool or apportion fees received in accordance with a business agreement.

Section 3. Standards of Practice for the Physical Therapist Assistant. While engaged in the practice of physical therapy, the physical therapist assistant shall:

- (1) Provide services only under the supervision and direction of a physical therapist;
- (2) Refuse to carry out procedures that the assistant believes are not in the best interest of the patient or that the assistant is not competent to provide by training or skill level;
- (3) Initiate treatment only after evaluation by the physical therapist;
- (4) Upon direction from the physical therapist, gather data relating to the patient's disability, but not determine the significance of the data as it pertains to the development of the plan of care;
- (5) Refer to the physical therapist inquiries that require an interpretation of patient information related to rehabilitation potential;
- (6) Comply with the plan of supervision established by the physical therapist;
- (7) Communicate with the physical therapist any change or lack of change that occurs in the patient's condition that may indicate the need for reassessment; and
- (8) Discontinue physical therapy services if reassessments are not done in compliance with Section 2(3) of this administrative regulation, and communicate to the appropriate parties.

Section 4. Standards for Supervision. While supervising the physical therapist assistant and supportive personnel, the physical therapist shall:

- (1)(a) At all times, including all work locations in all jurisdictions, be limited to:
 - 1. Supervising not more than four (4) full-time physical therapist assistants or supportive personnel; or
 - 2. The number of those persons providing part-time patient care for a period equivalent to that provided by four (4) full-time providers of patient care.
- (b) Temporary failure to abide by the maximum staffing ratio of physical therapists to physical therapist assistants or supportive personnel required in this section for a period not to exceed seven (7) consecutive work days shall not constitute a violation of this standard;
- (2) Not delegate procedures or techniques to the physical therapist assistant or supportive personnel if it is outside his or her scope of training, education or expertise.
- (3) Be responsible for:
 - (a) Interpreting any referral;
 - (b) Conducting the initial physical therapy evaluation;
 - (c) Establishing reporting procedures to be followed by the physical therapist assistant and supportive personnel;
 - (d) Evaluating the competency of the physical therapist assistant and supportive personnel;
 - (e) Supervising the physical therapist assistant by being available and accessible by telecommunications during the working hours of the physical therapist assistant;
 - (f) Insuring that if supportive personnel provide direct patient care that there is on site supervision by a physical therapist or physical therapist assistant;
 - (g) Insuring that a physical therapy student fulfilling clinical education requirements shall receive on-site supervision by a physical therapist;
 - (h) Insuring that a physical therapist assistant and student fulfilling clinical education requirements shall receive on-site supervision of which eighty (80) percent may be by a credentialed physical therapist assistant;
 - (i) Establishing discharge planning for patients who require continued physical therapy.

Section 5. Standards for Documentation. The physical therapist shall be responsible for the physical therapy record of a patient. The physical therapy record shall consist of:

- (1) The initial evaluation, a written or typed report signed and dated by the physical therapist performing the evaluation that shall

include:

- (a) Pertinent medical and social history;
- (b) Subjective information;
- (c) Appropriate objective testing;
- (d) Assessment, which may include problems, interpretation, and a physical therapy diagnosis identifying the nature and extent of the patient's impairment; and
- (e) Plan of care, including:
 1. Treatment to be rendered;
 2. Frequency and duration of treatment; and
 3. Measurable goals;
- (2) Progress notes, which shall be written or typed, signed, and dated by the person rendering treatment, and countersigned and dated by the physical therapist if written by supportive personnel, physical therapist students, physical therapist assistant students, or examination candidates. The progress notes shall include:
 - (a) A current record of treatment;
 - (b) Patient's adverse response to treatment;
 - (c) Any factors affecting treatment; and
 - (d) Data obtained by all objective tests performed;
- (3) Reassessment, which shall be written or typed, signed, and dated by a physical therapist. This reassessment shall be in compliance with Section 4(3)(i) through (l) of this administrative regulation:
 - (a) If the physical therapist is treating the patient, these reports may be incorporated into the progress notes.
 - (b) If a physical therapist assistant or supportive personnel are treating the patient, the report shall be a separate entry into the record.
 - (c) A reassessment shall include directly observed objective, subjective, and medical information completed by the physical therapist that is necessary for the revision or reaffirmation of the plan of care and measurable goals;
 - (4) Discharge summary, which shall be a written or typed, signed, and dated statement.
 - (a) A physical therapist assistant may write the discharge summary, which shall be countersigned by the responsible physical therapist.
 - (b) The discharge summary shall include:
 1. The date of discharge;
 2. The reason for discharge;
 3. The physical therapy status upon discharge; and
 4. A discharge plan, which shall include recommendations the physical therapist has regarding the need for continuing physical therapy.
 5. A discharge summary shall be written within thirty (30) days of the termination of the current plan of care if a subsequent plan of care has not been established; and
 - (5) The correct designation following the signature of the person who has entered a statement into the patient record shall be as follows:
 - (a) If written by a physical therapist: "PT". Appropriate designations for advanced physical therapy degrees may follow "PT";
 - (b) If written by a physical therapist's assistant: "PTA";
 - (c) If written by supportive personnel: "PT Aide", or "Physical Therapy Aide", or "PT Tech"; and
 - (d) If written by a student: "Physical Therapist Student" or "PT Student"; "Physical Therapist Assistant Student" or "PTA Student".

REBECCA KLUSCH, Executive Director

APPROVED BY AGENCY: July 22, 2010

FILED WITH LRC: August 12, 2010 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 28, 2010, at 9:00 a.m. at 312 Whittington Parkway, Suite 102, Louisville Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled.

This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do

not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Becky Klusch, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville Kentucky 40222, phone (502) 429-7140, fax (502) 429-7142.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Becky Klusch

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation sets out the code of ethical standards and standards of practice for Physical Therapists and Physical Therapist Assistants.
 - (b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS Chapter 327.040.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: It provides the standards of practice for credential holders.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It outlines the ethical conduct and standards of practice for credential holders.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative regulation: The amendment clarifies the ratio of supervision of physical therapist assistants and supportive personnel.
 - (b) The necessity of the amendment to this administrative regulation: To clarify the ratio of supervision.
 - (c) How the amendment conforms to the content of the authorizing statutes: The board is authorized to set standards for the practice of physical therapy.
 - (d) How the amendment will assist in the effective administration of the statutes: By clarifying the requirements of supervision.
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 4200 physical therapists and physical therapist assistants.
- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
 - (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There will be no change to regulated entities identified in question (3), only a clarification.
 - (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 in question (3).
 - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Clarification
 - (5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
 - (a) Initially: No costs to the board.
 - (b) On a continuing basis: No costs to the board.
 - (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A to Agency Revenue Fund.
 - (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will be no increase in fees or funding.
 - (8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation does not change the fees directly or indirectly.
 - (9) TIERING: Is tiering applied? Tiering was not used in this administrative regulation because the administrative regulation applies equally to all those individuals regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Physical therapists and physical therapists assistants credentialed by the board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 327.040 and 327.050.

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

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

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

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET

Board of Physical Therapy
(Amendment)

201 KAR 22:070. Requirements for foreign-educated physical therapists.

RELATES TO: KRS 327.050, 327.060

STATUTORY AUTHORITY: KRS 327.040(1), (11), 327.060(3)

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 327.060(3) authorizes the board to approve services to provide an evaluation of a foreign-educated physical therapist applicant's educational credentials. This administrative regulation establishes the requirements a foreign-educated physical therapist shall satisfy to become credentialed in the state of Kentucky.

Section 1. A foreign-educated physical therapist applicant shall be credentialed if the applicant:

(1) Complies with the requirements of KRS 327.060(1)(b); and

(2) In accordance with KRS 327.060(1)(b), meets the following requirements:

(a) Furnishes the board a favorable educational credentials evaluation report from a credentialing agency that uses the appropriate edition of the "Coursework Evaluation Tool" (CWT) copyrighted by Federation of State Boards of Physical Therapy (FSBPT);

1. An academic deficiency in general education coursework identified by the CWT shall be satisfied by the applicant through submission of evidence identifying one (1) of the following:

a. Completion of appropriate coursework at a regionally accredited academic institution;

b. Continuing education in a course approved by the board; or

c. Submission of a portfolio including a detailed resume and description of relevant work experience approved by the board.

(b) Shows proof of English Language Proficiency:

1. A score of not less than fifty (50) on the Test of Spoken

English (TSE);

2. Verification that the applicant has achieved the following minimum scores for each category of the Test of English as a Foreign Language, TOEFL® Internet-based test (TOEFL iBT): Writing, twenty-four (24), Speaking, twenty-six (26), Listening, eighteen (18), Reading, twenty-one (21); with an overall score of not less than eighty-nine (89); or

3. Verification that English is the native language of the country of origin;

(c) Submits a satisfactorily-completed application and appropriate fee as required by 201 KAR 22:135;

(d) Successfully completes the examination and HIV/AIDS education requirements as specified in KRS 327.050;

(e) Has successfully completed a minimum of three (3) months and no more than six (6) months of practice under the on-site supervision of a physical therapist credentialed under KRS Chapter 327 at a Kentucky facility previously approved by the board which satisfies the following requirements:

1. The supervised practice shall be for not less than 390 hours in a 3 month period, in a facility which is serving as a clinical education site for students enrolled in a program in physical therapist education accredited by the Commission for Accreditation of Physical Therapy Education (CAPTE);

2. The applicant shall work only with on-site supervision until a minimum score of three and five-tenths (3.5) with no ones (1.0) or twos (2.0) on a four (4.0) point scale has been achieved utilizing the Evaluation Form to Assess Physical Therapy Skills of Foreign Educated Applicant for Credentialing. The clinical supervisor shall submit the evaluation to the board after three (3) months practice, and if required, after the sixth month, when the required score denoting clinical competency shall have been reached;

3. The supervising physical therapist shall, within the three (3) years prior to serving as a supervisor, have previously acted as clinical supervisor for a physical therapist student as part of a CAPTE accredited program; and

4. The supervisor shall countersign all of the candidate's physical therapy records within fourteen (14) days.

Section 2. Temporary Permits for Foreign-educated Physical Therapist Applicants. (1) An applicant who has not satisfactorily completed three (3) months of supervised practice as a physical therapist shall be issued a temporary permit to complete Section 1(2)(e) of this administrative regulation if the applicant has:

(a) Completed the requirements of Section 1(2)(a) through (d) of this administrative regulation; and

(b) Submitted an approved "Supervisory Agreement for Physical Therapists Educated in a Foreign Country".

(2) The temporary permit shall be revoked if the applicant has not satisfactorily completed the supervised practice within a six (6) month period.

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

(a) Evaluation Form to Assess Physical Therapy Skills of Foreign Educated Applicant for Credentialing, 9/2/04"; and

(b) "Supervisory Agreement for Physical Therapists Educated in a Foreign Country, 10/12/00".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

REBECCA KLUSCH, Executive Director

APPROVED BY AGENCY: August 10, 2010

FILED WITH LRC: August 12, 2010 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 28, 2010, at 9 a.m. at 312 Whittington Parkway, Suite 102, Louisville Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on

the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Becky Klusch, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville Kentucky 40222, phone (502) 429-7140, fax (502) 429-7142.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Becky Klusch

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets out the licensing requirements for foreign educated physical therapists.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 327.060 and 327.040(1), and (11).

(c) How this administrative regulation conforms to the content of the authorizing statutes: It provides the procedures for foreign educated licensing requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides the procedures for foreign educated licensing 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: The amendment clarifies the eligibility for foreign educated licensing approval process.

(b) The necessity of the amendment to this administrative regulation: To clarify the requirements for foreign educated physical therapy candidates.

(c) How the amendment conforms to the content of the authorizing statutes: The board is authorized to set standards for licensing procedures.

(d) How the amendment will assist in the effective administration of the statutes: By clarifying the requirements of a foreign educated physical therapy candidate to become licensed in the state of Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 50 applicants a year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: If the applicant is deficient in education, it explains alternatives of how to fulfill the deficiency.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): They may incur costs in taking additional educational courses to satisfy the deficiencies.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Allows experience to count toward the deficiency in education.

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

(a) Initially: There will be no additional costs to the board.

(b) On a continuing basis: There will be no additional costs to the board.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A Costs for implementing and enforcing this amendment will be funded by the applicant.

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

regulation.

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

(9) TIERING: Is tiering applied? Tiering does not apply in this administrative regulation because the administrative regulation applies equally to all those individuals regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 327.040(1), (11) and 327.060

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

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

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

(c) How much will it cost to administer this program for the first year? None

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

GENERAL GOVERNMENT CABINET Board of Licensed Professional Counselors (Amendment)

201 KAR 36:060. Qualifying experience under supervision.

RELATES TO: KRS 335.500(4), 335.505(4), 335.525(1)(e)

STATUTORY AUTHORITY: KRS 335.515(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.505(4) allows a student intern or trainee in professional counseling to use the title of "professional counselor intern" or "student in training" if the activities are performed under the supervision or direction of an approved supervisor and the activities are a part of a supervised program of study. KRS 335.525(1)(e) provides that an applicant for a professional clinical counselor license shall have acquired 4000 hours of experience in the practice of counseling under approved supervision. KRS 335.515(3) requires the board to promulgate administrative regulations to implement KRS 335.500 to 335.599, relating to licensed professional counselors. This administrative regulation establishes the requirements relating to supervision and the requirements for experience under supervision.

Section 1. Definitions. (1) "Practice of counseling" means professional counseling services within the scope of Section 2 of this administrative regulation and which involve the application of mental health and development principals, methods or procedures, including assessment, evaluation, diagnosis, and treatment of emotional disorders or mental illnesses, to assist individuals to achieve more effective personal, social, educational, or career development and adjustment.

(2) "Supervise" means a licensed professional counselor associate who works with clients under supervision.

(3) "Supervision" means the educational process of utilizing a partnership between a supervisor and a supervisee aimed at enhancing the professional development of the supervisee in providing professional counseling services to meet the requirements of KRS 335.525(1)(e).

(4) "Supervisor" means a member of a mental health or behavioral-services profession listed in Section 3(1) of this administrative regulation who controls, oversees, guides, and takes responsibility for the professional clinical counseling practice of a supervisee in accordance with this administrative regulation.

Section 2. Requirements for the Practice of Professional Counseling. (1) The practice of professional counseling shall be based on knowledge of interpersonal, cognitive, cognitive behavioral, psychodynamics, human relations, crisis intervention, psychopathology, group dynamics, and effective methods and strategies necessary to help the client achieve mental, vocational, emotional, physical, social, moral, and spiritual development and adjustment throughout the client's life span.

(2) A practitioner of professional counseling shall possess and utilize numerous skills, including skills necessary to apply professional counseling services relative to the following areas:

(a) The helping relationship, including counseling theory and practice;

(b) Human growth and development;

(c) Lifestyle and career development;

(d) Group dynamics, process, counseling, and consulting;

(e) Assessment, appraisal, and testing of individuals;

(f) Social and cultural foundation, including multicultural issues;

(g) Principles of etiology, diagnosis, treatment planning, and prevention of mental and emotional disorders and dysfunctional behavior;

(h) Research and evaluation; and

(i) Professional orientation and ethics.

Section 3. Supervision. (1) A supervisor shall be properly credentialed under Kentucky law as a member of one (1) of the following professions:

(a) A licensed professional clinical counselor;

(b) A licensed psychologist or a certified psychologist with autonomous functioning;

(c) A licensed clinical social worker;

(d) A licensed psychiatrist;

(e) A nurse with a master's degree and psychiatric certification; or

(f) A licensed marriage and family therapist.

(2) The supervisor shall:

(a) Provide supervision to a person obtaining the experience required under KRS 335.525(1)(e);

(b) Not have:

1. An unresolved citation filed against the supervisor by the board that licenses or certifies that profession;

2. A suspended or probated license or certificate;

3. An order from the board under which the supervisor is licensed or certified prohibiting the supervisor from providing supervision; or

4. A previous or existing dual relationship or other personal relationship with a supervisee;

(c) Have been in the practice of his or her profession for two (2) years following licensure or certification in that profession; and

(d) Have completed the supervisor training required by subsection (3) of this section.

1. Except as provided in subparagraph 2 of this paragraph, experience acquired under the supervision of an individual who has not completed the supervisor training shall not count toward the requirements of KRS 335.525(1)(e).

2. A supervisor who is providing supervision on the effective date of this administrative regulation shall complete the training by October 31, 2010.

(3) In order to obtain board-approved supervisor status, a supervisor shall complete three (3) hours of board-approved supervisor training.

(a) The board-approved supervisor training shall cover Kentucky law governing the practice of professional counseling, both administrative regulations and statutes, theories of supervision, ethical issues involved in supervision, and supervisor responsibilities such as logs, treatment, planning, recording, and proper documentation.

(b) Supervisor training shall be conducted by an instructor who is a Licensed Professional Clinical Counselor and who has demonstrated proficiency in the curriculum established in paragraph (a) if this subsection.

(c) To maintain board-approved supervisor status, a supervisor shall retake the board-approved supervisor training every three (3) years.

(4) A supervisor of record shall assume responsibility for the practice of the supervisee. A supervisor shall not serve as a supervisor of record for more than six (6) persons obtaining experience for certification or licensure at the same time.

Section 4. Supervisory Agreement. (1) A supervisee shall enter into a written supervisory agreement with an approved supervisor. The supervisory agreement shall contain:

(a) The name and address of the supervisee;

(b) The name, address, license or certification number, and number of years of practice of the supervisor of record;

(c) The name, address, license or certification number, and number of years of practice of other supervisors;

(d) The agency, institution, or organization where the experience will be received;

(e) A detailed description of the nature of the practice including the type of:

1. Clients which shall be seen;

2. Therapies and treatment modalities which shall be used including the prospective length of treatment; and

3. Problems which shall be treated;

(f) The nature, duration, and frequency of the supervision, including the:

1. Number of hours of supervision per week;

2. Number of hours of individual supervision;

3. Methodology for transmission of case information; and

4. Number of hours of face-to-face supervision which:

a. Meet the requirements of KRS 335.525(1)(e); and

b. Occur a minimum of three (3) times per month and one (1) hour per meeting;

(g) The conditions or procedures for termination of the supervision;

(h) A statement that:

1. The supervisor of record understands that the supervisor shall be held accountable to the board for the care given to the supervisee's clients; and

2. The supervisor of record meets the criteria established in Section 3 of this administrative regulation; and

(i) The signatures of both the supervisor and the supervisee. If a supervisee changes his or her supervisor of record as identified in the supervisory agreement, the supervisee shall submit a new supervisory agreement which sets forth the information required by subsection (1) of this section and which identifies the new supervisor of record.

(3) The supervisory agreement shall be approved by the board before the licensed professional counselor associate begins the practice of professional counseling.

Section 5. Experience Under Supervision. Experience under supervision shall consist of:

(1) Direct responsibility for a specific individual or group of clients; and

(2) Broad exposure and opportunity for skill enhancement with a variety of developmental issues, dysfunctions, diagnoses, acuity levels and population groups.

Section 6. Supervision Requirements. (1) Supervision shall relate specifically to the qualifying experience and shall focus on:

(a) The appropriate diagnosis of a client problem leading to proficiency in applying professionally recognized clinical nomenclature;

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- (b) The development and modification of the treatment plan;
- (c) The development of treatment skills suitable to each phase of the therapeutic process;
- (d) Ethical problems in the practice of professional counseling; and

(e) The development and use of the professional self in the therapeutic process.

(2) A supervisee shall not continue to practice professional counseling if:

(a) The conditions for supervision set forth in the supervisory agreement required by Section 4 of this administrative regulation are not followed; or

(b) The supervisory agreement is terminated for any reason.

(3) If the terms of the supervisory agreement are not being met by the supervisee, the supervisor shall immediately notify this board in writing.

Section 7. Evaluation by Board. The period of supervised experience required by KRS 335.525(1)(e) shall be evaluated by the board according to one (1) of the following methods:

(1) A candidate who seeks to obtain experience in the Commonwealth of Kentucky shall submit the supervisory agreement required by Section 4 of this administrative regulation for the experience prior to beginning to accrue the required experience; or

(2) A candidate who obtained the experience in another state shall submit documentation of the hours of supervision with the Application for Licensed Professional Counselor and Associate required by 201 KAR 36:070. The documentation shall also:

(a) Provide information that verifies that the requirements for the license or certificate of the supervisor from the state in which the license or certificate was held are substantially equivalent to the requirements for that license or certificate in Kentucky;

(b) Provide information that verifies that the supervisor is in good standing with the certifying or licensing state; and

(c) Demonstrate that the practice and supervision requirements in the state from which the candidate is applying are substantially equivalent to the requirements established under this administrative regulation.

Section 8. Temporary Supervision. (1) In extenuating circumstances, if a licensed professional counselor associate is without supervision, the associate may continue working up to sixty (60) calendar days under the supervision of a qualified mental health provider while an appropriate board-approved supervisor is sought and a new supervision contract is submitted to the board. Extenuating circumstances include situations such as death or serious illness of the board-approved supervisor, a leave of absence by the supervisor, or the termination of the supervisor's employment.

(2)(a) Within ten (10) days of the occurrence, the supervisee shall notify the board of the extenuating circumstances which have caused the supervisee to require temporary supervision.

(b) The supervisee shall submit, in writing, a plan for resolution of the situation within thirty (30) calendar days of the change in status of board-approved supervision.

(c) The written plan shall include:

1. The name of the temporary supervisor;

2. Verification of the credential held by the temporary supervisor;

3. An email address and a postal address for the temporary supervisor and the supervisee; and

4. A telephone number for the temporary supervisor.

Section 9. Incorporation by Reference. (1) "LPCA Supervisory Agreement", established March 2010, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensed Professional Counselors, 911 Leewood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

TIMOTHY ROBERTS, Chair

APPROVED BY AGENCY: July 16, 2010

FILED WITH LRC: August 13, 2010 at noon

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September

24, 2010 at 1 p.m. at Division of Occupations and Professions, 911 Leewood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 17, 2010 five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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 September 30, 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: Frances Short, Director, Division of Occupations and Professions, 911 Leewood Drive, Frankfort, Kentucky 40602, phone (502) 564-3296, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Frances Short

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the supervision requirements to qualify for licensure.

(b) The necessity of this administrative regulation: This administrative regulation enables the board to evaluate applications by establishing the supervision experience requirements for licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 335.525(1)(e) provides that an applicant for a professional counselor license must have acquired 4,000 hours of experience in the practice of counseling under the general supervision of an approved supervisor. This administrative regulation establishes the requirements relating to supervision and the requirements for experience under supervision.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation specifies the types of experience that is acceptable for licensure.

(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 establishes the process that a supervisee must follow if his or her supervisor is unable to provide supervision.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation enables the board to ensure that supervisees have proper supervision where the supervision has terminated under extenuating circumstances.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 335.525(1)(e) provides that an applicant for a professional counselor license must have acquired 4,000 hours of experience in the practice of counseling under the general supervision of an approved supervisor. This administrative regulation establishes the requirements relating to supervision and the requirements for experience under supervision.

(d) How the amendment will assist in the effective administration of the statutes: The regulation specifies the requirements for obtaining the supervision necessary to qualify for licensure.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board licenses approximately 1,200 persons in the Commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation provides that supervisees will be required to contact the board and provide information about a temporary supervisor where the supervision has terminated under extenuating circumstances.

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(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost will be determined by the supervisor.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The board expects that a supervisor will be able to continue practice and obtain proper supervision where their supervision has terminated under extenuating circumstances.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: None

(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: Agency funds.

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

(9) TIERING: Is tiering applied? No. This administrative regulation applies to all associates 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)? 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 Board of Licensed Professional Counselors (Amendment)

201 KAR 36:070. Education requirements.

RELATES TO: KRS 335.525(1)(c), (d), 335.527(1)(a)

STATUTORY AUTHORITY: KRS 335.515(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.525(1)(c) requires that applicants for licensure shall have received a master's or doctoral degree in counseling or a related field from a regionally-accredited institution. KRS 335.525(1)(d) requires that applicants for licensure shall have sixty (60) graduate semester hours in specified areas. This administrative regulation establishes the educational requirements for licensure.

Section 1. (1) In accordance with KRS 335.525(1)(c), an applicant shall be deemed to have a degree in:

(a) Counseling if the applicant has completed an academic program of study where the name of the program or the major field of study contains the word "counseling"; or

(b) A Related field if the applicant has completed an academic program of study that includes an organized sequence of graduate coursework in a minimum of five (5) of the nine (9) content areas established in KRS 335.525(1)(d).

(2) After December 31, 2010, an applicant shall be deemed to have an acceptable degree if the applicant has completed an academic program of study where the name of the program or the major field of study contains the word counseling.

(3) An applicant shall ~~if an applicant proffers a degree in a related field, the applicant shall also~~ If an applicant proffers a degree in a related field, the applicant shall also provide evidence of additional coursework in each area listed in KRS 335.525(1)(d)1-9 that is not included in the applicant's degree. The coursework in the degree program, in addition to the other coursework, shall demonstrate that the applicant has documented coursework in all nine (9) of the content areas listed in KRS 335.525(1)(d).

Section 2.(1) Except as provided by subsection (2) of this section, the practicum or internship required by KRS 335.525(1)(e) shall be completed within the organized sequence of study of the graduate degree of the applicant.

(2) If the degree held by the applicant did not include a 400 hour practicum or internship, the applicant shall have completed a graduate level practicum or internship at a regionally- accredited university or college under the direction of a qualified graduate faculty member.

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

(a) "Instructions for Completion of Application for a Licensed Professional Counselor Associate (LPCA)";

(b) "Instructions for Completion of Application for Licensed Professional Counselor (LPCC)"; and

(c) "Application for Licensed Professional Counselor and Associate".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the Chair of the Kentucky Board of Licensed Professional Counselors executes this administrative regulation prior to filing, pursuant to the authority granted by statute, and following a vote of approval by the Board as reflected in the Board's minutes. This administrative regulation is filed with the Legislative Research Commission as required by KRS Chapter 13A to carry out and enforce the provisions of KRS Chapter 335.

TIMOTHY ROBERTS, Chair

APPROVED BY AGENCY: July 16, 2010

FILED WITH LRC: August 13, 2010 at 11 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2007 at 1 p.m. at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 17, 2010 five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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 September 30, 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: Frances Short, Director, Division of Oc-

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cupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-3296, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Frances Short

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the educational requirements to qualify for licensure.

(b) The necessity of this administrative regulation: This administrative regulation enables the board to evaluate an applicant's qualifications by establishing the educational requirements for licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 335.525(1)(c) requires that applicants for licensure shall have received a master's or doctoral degree in counseling or a related field from a regionally-accredited institution. KRS 335.525(1)(d) requires that applicants for licensure shall have sixty (60) graduate semester hours in specified areas. KRS 335.515(3) authorizes the board to promulgate administrative regulations necessary to carry out the provisions of KRS 335.500 to 335.599.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation specifies the types of education that is acceptable for licensure.

(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 specifies that to qualify as a degree in related field, the degree shall include the word counseling.

(b) The necessity of the amendment to this administrative regulation: See (1)(b) above.

(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: The regulation specifies the requirements for obtaining the education necessary to qualify for licensure.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board receives approximately 100 applications for licensure yearly.

(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 administrative regulation provides that applicants will have to fulfill specific educational requirements before obtaining licensure.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs will be dependent on the various expenses dictated by the higher education institutions from which the education will be acquired.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The board expects that a person applying for licensure will have acquired an education necessary to practice professional counseling in a competent manner to protect the public.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: None

(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: Agency funds.

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

(9) TIERING: Is tiering applied? No. This administrative regulation applies to all applicants for licensure.

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:

PUBLIC PROTECTION CABINET Office of Occupations and Professions Board for Proprietary Education (Amendment)

201 KAR 40:040. Commercial driver license training school curriculum and refresher course.

RELATES TO: KRS 165A.330(1), 165A.370, 165A.460(1)

STATUTORY AUTHORITY: KRS 165A.340(3), 332.095(3) [~~165A.540~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.460(1) ~~requires [mandates]~~ that the Kentucky ~~[State Police and the]~~ State Board for Proprietary Education establish a curriculum for commercial driver license training schools in consultation with the Kentucky State Police and the Kentucky Community and Technical College System. This administrative regulation establishes the curriculum regarding standards for commercial driver license training schools.

Section 1. A commercial driver license training school shall adhere to the curriculum contained in the General Curriculum Standards for Kentucky Licensed Commercial Driving Schools [~~"Kentucky Commercial Driver License, Official Guidelines and Curriculum", August 2002 edition.~~]

Section 2. A commercial driver license training school shall:

~~(1) Mandate that the student successfully completes an independent study program approved by the Professional Truck Driver Institute of America, Inc., before taking the skills examination to obtain a commercial driver license;~~

~~(2) Maintain the student's completed independent study program; and~~

~~(3) Score in the student's school record.]~~

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Section 2.~~[3-]~~ A commercial driver license training school may offer a refresher course for persons with a valid Class A commercial driver's license ~~[at least one (1) year, verifiable commercial driving experience]~~ and shall maintain records of all persons taking the refresher course. The commercial driver license training school shall:

(4) assess the person's qualifications and skill level to determine the appropriate course of study ~~[curriculum]~~ as contained in the General Curriculum Standards for Kentucky Licensed Commercial Driving Schools, ~~["Kentucky Commercial Driver License, Official Guidelines and Curriculum"];~~

(2) ~~Mandate that before a student of a commercial driver license training school licensed by the board completes the refresher course, that the person shall successfully complete an independent study program approved by the Professional Truck Driver Institute of America, Inc;~~

(3) ~~Maintain the student's completed independent study program and score in the student's school record.]~~

Section 3.~~[4-]~~ A commercial driver license training school shall comply with drug testing of students in accordance with the United States Department of Transportation, Federal Motor Carrier Safety Administration Rule 49 C.F.R. 382.

Section 4.~~[5-]~~ Incorporation by Reference. (1) "General Curriculum Standards for Kentucky Licensed Commercial Driving Schools", June 2010 edition", ~~["Kentucky Commercial Driver License, Official Guidelines and Curriculum", August 2002 edition, developed by the Kentucky State Police and the Kentucky Community and Technical College System as mandated by KRS 465A.460(1)]~~ is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board for Proprietary Education, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK GABIS, Board Chair

APPROVED BY AGENCY: July 27, 2010

FILED WITH LRC: July 29, 2010 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 28, 2010 at 10 a.m., Eastern Time, at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wished to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business on September 30, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Angela Evans, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5600, fax (502) 564-6801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Angela Evans, Board Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does. The regulation establishes the curriculum for commercial driver license training schools.

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to establish one curriculum for all commercial driver license training schools.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is given the authority to es-

tablish the curriculum for commercial driver license training schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the curriculum for commercial driver license training schools.

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

(a) How the amendment will change this existing administrative regulation: This amended regulation updates the edition of the Kentucky Commercial Driver License Official Guidelines and Curriculum and eliminates the independent study program.

(b) The necessity of the amendment to this administrative regulation: This amended regulation is necessary to notify the public of the most recent edition of the curriculum and guidelines, as well as the elimination of the independent study program.

(c) How the amendment conforms to the content of the authorizing statutes: This amended regulation conforms to the content of the authorizing statute by setting forth the curriculum for CDL training schools.

(d) How the amendment will assist in the effective and administration of the statutes: This amended regulation will clarify which curriculum is to be used in CDL schools.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 23 commercial driver license training schools, the Kentucky Community and Technical College System, and Kentucky State Police.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with the administrative regulation or amendment: The entities will have to review their curriculums, to ensure they comply with the materials from the 2010 edition.

(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 to comply with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The CDL schools will be providing training using the most recent curriculum.

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

(a) Initially: There is no cost.

(b) On a continuing basis: There is no cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded is funded by fees paid by licensees and applicants.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply to all commercial driver license training schools.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Proprietary Education is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.

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

regulation. KRS 165A.510

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

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

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

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

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

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

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

201 KAR 40:050. Application for license for commercial driver license training school.

RELATES TO: KRS 165A.330(1), 165A.370, 165A.450, 165A.465, 165A.470, 165A.475, 165A.480(1)

STATUTORY AUTHORITY: KRS 165A.340(3), 165A.460-165A.515 ~~[165A.510]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.460-165A.515 requires ~~[mandates]~~ that the State Board for Proprietary Education establish an application procedure for commercial driver license training schools. This administrative regulation establishes the application procedures for commercial driver license training schools.

Section 1. Application for Kentucky Resident Commercial Driver License Training School. (1) Prior to establishment of a commercial driver license training school residing in Kentucky, the school owner ~~[owner(s)]~~ shall:

(a) Complete and submit to the board Form PE 30, [a completed original and one (1) copy of the] Application for Resident [to Operate a] Commercial Driver License Training School, with supporting documentation as listed on the form, ~~[incorporated by reference]~~;

(b) Pay the nonrefundable application fee of \$200 established in KRS 165A.475(2);

(c) Pay the nonrefundable initial licensure fee of \$100 ~~[\$300]~~;

(d) Pay the nonrefundable contribution to the Student Protection Fund of \$300; and

(e) Meet the requirements of Section 3 ~~[Sections 3 through 5]~~ of this administrative regulation.

(2) All fees shall be submitted by certified check or money order payable to the "Kentucky State Treasurer".

Section 2. Application for Non-Kentucky Resident Commercial Driver License Training School. (1) Prior to establishment of a commercial driver license training school not residing in Kentucky but recruiting, advertising, or otherwise doing business in Kentucky, the school's owner ~~[or owners]~~ shall:

(a) Complete and submit to the board Form PE 31, [a completed original and one (1) copy of the] Application for Non-Resident [to Operate a Non-Kentucky Resident] Commercial Driver License Training School with supporting documentation as listed on the form;

(b) Pay the nonrefundable application fee of \$200 established in KRS 165A.475(2);

(c) Pay the nonrefundable initial licensure fee of \$700 ~~[\$900]~~;

(d) Pay the nonrefundable contribution to the Student Protection Fund of \$900;

(e) Meet the requirements of Section 3 ~~[Sections 3 and 4]~~ of this administrative regulation.

(2) All fees shall be submitted by certified check or money order payable to the "Kentucky State Treasurer".

~~Section 3. [State and National Criminal History Background Checks. (1) Any person, firm, partnership, association, educational institution, establishment, agency, organization, officers of a corporation, school director, commercial driver license instructor or agent that offers commercial driver license driver training shall undergo a state and national criminal history background check at the time of application to operate a school, and submit to being fingerprinted by the Kentucky State Police, on the fingerprint card supplied by the board with the Application to Operate a Kentucky Resident Commercial Driver License Training School or the Application to Operate a Non-Kentucky Resident Commercial Driver License Training School;~~

~~(2) Each fingerprint card submitted to the board shall be accompanied by a nonrefundable fee of thirty four (34) dollars, payable by certified check or money order to the Kentucky State Treasurer.~~

~~Section 4.] Evidence of Liability Insurance Coverage. Each application to operate a commercial driver license training school shall be accompanied by:~~

~~(1) Evidence of liability insurance coverage for the commercial driver license training school, the instructors, and students while operating driver training school equipment with liability insurance coverage as mandated by KRS 165A.475(1)(d);~~

~~(2) Verification of liability insurance coverage from its insurance company of the insurance policy to include a complete listing of all equipment, serial numbers, vehicle identification numbers covered by the liability insurance with subsequent liability insurance coverage changes filed with the board in writing within thirty (30) days of the subsequent change.~~

Section 5. Inspection and Investigation of Commercial Driver License Training School and Equipment. By memorandum of agreement with the board, the Kentucky State Police shall:

(1) Inspect each Kentucky resident commercial driver license training school facility and equipment which shall be recorded on forms provided by the Kentucky State Police and which forms shall be filed with the board.

(2) Investigate the commercial driver license training school and verify the contents of its application for licensure on forms provided by the Kentucky State Police and which forms shall be filed with the board.

Section 6. Denial of Application. (1) The board shall deny an application to operate a commercial driver license training school for:

(a) Failure to comply with the requirements of KRS 165A.460-165A.515;

(b) Failure to comply with the administrative regulations governing the application and operation of a commercial driver license training school.

(c) Failure to comply with KRS 165A.470(1)-(4) regarding persons connected in any capacity with commercial driver license training schools.

(2) The board may deny an application to operate a commercial driver license training school for lack of good moral character as mandated by KRS 165A.475(1)(b).

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

(a) "Application to Operate a Commercial Driver License Training School", August 2002 edition.

(b) "Application to Operate a Non-Kentucky resident Commercial Driver License Training School", August 2002 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board for Proprietary Education, 911 Leawood Drive, Frankfort, Kentucky 40601, Mon-

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

MARK GABIS, Board Chair

APPROVED BY AGENCY: July 27, 2010

FILED WITH LRC: July 29, 2010 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 28, 2010 at 10 a.m., Eastern Time, at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wished to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business on September 30, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Angela Evans, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5600, fax (502) 564-6801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Angela Evans, Board Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does. The regulation established the application for a license as a commercial driver license training school.

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to establish the application for commercial driver license training schools.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority to establish the application for commercial driver license training schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the application for commercial driver license training schools.

(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 clarifies the application for commercial driver license training schools.

(b) The necessity of the amendment to this administrative regulation: This amended regulation is necessary to clarify the requirements for commercial driver license training school.

(c) How the amendment conforms to the content of the authorizing statutes: This amended regulation conforms to the content of the authorizing statute by setting forth the minimum standards and fees for issuance of a commercial driver license training school.

(d) How the amendment will assist in the effective and administration of the statutes: This amended regulation will clearly define and set forth the requirements for commercial driver license training schools.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 23 commercial driver license training schools, the Kentucky Community and Technical College System, and Kentucky State Police.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with the administrative regulation or amendment: The regulated entities will not have to take any new actions to comply with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It will not cost the regulated entities anything to comply with the amendments

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment reduces the initial school licensure fees to be equal to the non-CDL schools.

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

(a) Initially: There will be minimum cost to implement this regulation. The cost of making copies of the application is approximately \$200.

(b) On a continuing basis: Minimal

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by fees paid by licensees and applicants.

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

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

(9) **TIERING:** Is tiering applied? Tiering was not applied as the criteria apply to all commercial driver license training schools.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Proprietary Education is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 165A.510

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

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

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

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

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

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

PUBLIC PROTECTION CABINET Office of Occupations and Professions Board for Proprietary Education (Amendment)

201 KAR 40:060. Application for renewal of license for commercial driver license training school.

RELATES TO: KRS 165A.330(1), 165A.370, 165A.485, 165A.510, 49 C.F.R. 325

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STATUTORY AUTHORITY: KRS 165A.340(3), ~~165A.519~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.485 requires ~~mandates~~ that the State Board for Proprietary Education establish an application for license renewal of commercial driver license training schools. This administrative regulation establishes the renewal procedures for commercial driver license training schools.

Section 1. Renewal Application for Kentucky ~~Resident~~ Commercial Driver License Training School. (1) On or before May 15 of each year, a licensed Kentucky resident commercial driver license training school shall:

(a) ~~Complete and submit to the board Form PE 32, [a completed original and one (1) copy of the] Renewal Application to Operate a Resident Commercial Driver License Training School,~~ with supporting documentation as listed on the form;

(b) Pay the nonrefundable renewal application fee of \$200 established in KRS 165A.475(2);

(c) Pay the nonrefundable renewal licensure fee of:

1. \$300 for licensed commercial driver license training schools for net tuition income up to and including \$50,000; and

2. An additional fifteen (15) dollars for each \$10,000 in net tuition thereafter, not to exceed a total renewal fee of \$2,000; and

(d) Meet the requirements of Section 3 ~~[Sections 3 through 5]~~ of this administrative regulation.

(2) All fees shall be paid by ~~[submitted by certified]~~ check or money order payable to the "Kentucky State Treasurer".

Section 2. Renewal Application for Non-Kentucky Resident Commercial Driver License Training School. (1) On or before May 15 of each year, a licensed non-Kentucky resident commercial driver license training school not residing in Kentucky but recruiting, advertising, or otherwise doing business in Kentucky shall:

(a) ~~Complete and submit to the board Form PE 33, [a completed original and one (1) copy of the] Renewal Application to Operate a Non-Resident Commercial Driver License Training School,~~ with supporting documentation as listed on the form;

(b) Pay the nonrefundable renewal application fee of \$200 established in KRS 165A.475(2);

(c) Pay the nonrefundable renewal licensure fee of \$900; and

(d) Meet the requirements of Section 3 ~~[Sections 3 and 4]~~ of this administrative regulation.

(2) All fees shall be paid by ~~[submitted by certified]~~ check or money order made payable to the "Kentucky State Treasurer".

Section 3. Evidence of Liability Insurance Coverage. Each renewal application to operate a commercial driver license training school shall be accompanied by verification:

~~(1) Evidence of liability insurance coverage for the commercial driver license training school from a Kentucky-Licensed insurance carrier, [the instructors, and students while operating driver training school equipment with liability insurance coverage] as mandated by KRS 165A.475(1)(d).;~~

~~(2) Verification of liability insurance coverage from the school's [its] insurance carrier shall [company of the insurance policy to] include on the policy a complete listing of all equipment, serial numbers, and vehicle identification numbers covered by the liability insurance with subsequent liability insurance coverage changes filed with the board in writing within thirty (30) days of the subsequent change.~~

Section 4. ~~[Inspection and Investigation of Commercial Driver License Training School and Equipment. By memorandum of agreement with the board, the Kentucky State Police shall:~~

~~(1) Inspect each Kentucky resident commercial driver license training school including facility and equipment on forms provided by the Kentucky State Police and which forms shall be filed with the board;~~

~~(2) Investigate the commercial driver license training school and verify the contents of its renewal application for licensure on forms provided by the Kentucky State Police and which forms shall be filed with the board.~~

~~Section 5.] Denial of Renewal Application. (1) The board shall~~

deny a renewal application to operate a commercial driver license training school for:

(a) Failure to comply with the requirements of KRS 165A.460-165A.515;

(b) Failure to comply with the administrative regulations governing the application and operation of a commercial driver license training school;

(c) Failure to comply with KRS 165A.475(1)(d) regarding persons connected in any capacity with commercial driver license training schools.

(d) Failure to maintain all training vehicles in a safe operating condition, pursuant to 49 C.F.R. 325, as enforced by the Kentucky State Police.

(2) The board may deny a renewal application to operate a commercial driver license training school for lack of good moral character, as determined by KRS 165A.475(7).

Section ~~5.[6.]~~ Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form PE 32, "Renewal Application to Operate a Resident Commercial Driver License Training School", 2010 [August 2002] edition; and

(b) Form PE 33, "Renewal Application to Operate a Non-Resident [Non-Kentucky Resident] Commercial Driver License Training School", 2010 [August 2002] edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board for Proprietary Education, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK GABIS, Board Chair

APPROVED BY AGENCY: July 27, 2010

FILED WITH LRC: July 29, 2010 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 28, 2010 at 10 a.m., Eastern Time, at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wished to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business on September 30, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Angela Evans, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5600, fax (502) 564-6801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Angela Evans, Board Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does. This regulation establishes the renewal process and new forms for commercial driver license training schools.

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to establish the renewal process for commercial driver license training schools.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority to establish the renewal process for commercial driver license training schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the renewal process for commercial driver license training schools and provides a new form.

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

(a) How the amendment will change this existing administrative regulation: This amended regulation provides a different renewal form, adds another reason for denial of renewal and deletes passages from the regulation already stated in statute.

(b) The necessity of the amendment to this administrative regulation: This amended regulation is necessary to change the renewal form.

(c) How the amendment conforms to the content of the authorizing statutes: This amended regulation conforms to the content of the authorizing statute by setting forth the process for renewal and reasons for denial.

(d) How the amendment will assist in the effective and administration of the statutes: This amended regulation will change the renewal form, remove redundant language and a reason for denial.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 23 commercial driver license training schools, the Kentucky Community and Technical College System, and Kentucky State Police.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with the administrative regulation or amendment: No new action is required to comply to the amendment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will use a form that is more understandable.

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

(a) Initially: Approximately \$200 to print the new applications

(b) On a continuing basis: Minimal

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded is funded by fees paid by licensees and applicants.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply to all commercial driver license training schools.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Proprietary Education is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 165A.485, 165A.510

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

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

be generated from this regulation.

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

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

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

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

PUBLIC PROTECTION CABINET Office of Occupations and Professions Board for Proprietary Education (Amendment)

201 KAR 40:070. Commercial driver license training school instructor and agent application and renewal procedures.

RELATES TO: KRS 165A.330(1), 165A.350, 165A.370, 165A.465, 165A.470, 165A.475, 165A.480, 165A.485

STATUTORY AUTHORITY: KRS 165A.340(3), 165A.510

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.460-515 requires [mandates] that the State Board for Proprietary Education establish standards for instructors and agents of commercial driver licensing schools including application and renewal procedures. This administrative regulation establishes the standards for instructors and agents including application and renewal procedures regarding commercial driver license training schools.

Section 1. Definitions. (1) "Classroom instructor" means a commercial driver license school instructor whom the school owner has qualified to perform classroom instruction only for the classroom sections of the General Curriculum Standards for Kentucky Licensed Commercial Driving Schools.

(2) "Skills Instructor" means a commercial drivers license school instructor who instructs the Range and Street sections of the General Curriculum Standards for Kentucky Licensed Commercial Driving Schools, June 2010 edition, and has met the licensing requirements of Section 2 of this administrative regulation.

Section 2. Application for Commercial Driver License Training School Skills Instructor and Agent. [An applicant for a commercial driver license training school instructor or agent shall:] (1) Complete and submit Form PE 34, [a completed original] Application for a Commercial Driver License Training School Skills Instructor, or complete and submit Form PE 36, [an original] Application for License as a Commercial Driver License Training School Agent;

(2) Submit two (2) recent photographs no larger than 2 in. x 2 in.;

(3) Pay the nonrefundable application fee of twenty (20) dollars established in KRS 165A.475(6);

(4) Pay the nonrefundable initial licensure fee of \$150;

(5) Provide a copy of the applicant's valid Class A CDL license;

(6) Provide proof of at least two (2) years of verifiable commercial over the road driving experience; and

(7) Provide proof of receiving a passing score on the written examination and skills examination administered by the Kentucky State Police.

Section 3. [Successfully complete the written examination and skills examination administered by the Kentucky State Police; and

(6) Meet the standards of Section 2 of this administrative regulation.

Section 2.] State and National Criminal History Background Checks. [(4)] An applicant for a commercial driver license instructor

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or ~~agent and an applicant as a commercial driver license instructor or~~ agent shall undergo a state and national criminal history background check ~~upon [at the time of] application and shall submit to being fingerprinted by the Kentucky State Police as required by KRS 165A.465, on the fingerprint card supplied by the board.~~

~~(2) Each fingerprint card submitted to the board shall be accompanied by a nonrefundable fee of thirty-four (34) dollars, payable by certified check or money order to the Kentucky State Treasurer.~~

Section 4.~~[3.]~~ Application for Renewal of Commercial Driver License Training School Instructor or Agent. On or before May 15 of each year, a licensed commercial driver license training school instructor or agent, or a licensed commercial driver license training school on behalf of the skills instructor or agent, shall:

(1) Complete and submit Form PE 35 [a completed original] Renewal Application for a Commercial Driver License Training School Skills Instructor, or complete and submit Form PE 37 [a completed original] Renewal Application for a Commercial Driver License Training School Agent;

(2) Submit two (2) recent passport-size photographs ~~[no larger than 2 in. x 2 in.];~~

(3) Pay the nonrefundable application fee of twenty (20) dollars established in KRS 165A.475(6); and

(4) Pay the nonrefundable renewal fee of \$150.

Section 5. Classroom Instructors. The CDL school shall submit a PE 11 Form to the Board upon qualifying an individual as a classroom instructor.

Section 6. Temporary License for CDL School Agent or Skills Instructor. (1) The board shall issue to an applicant, who has completed the requirements of Sections 2 and 3 of this administrative regulation, a temporary permit for the performance of skills instructor or agency duties while the license application is being processed.

(2) The board shall provide the applicant and the licensed school a letter stating the applicant's application is in order and is being processed for applicant licensing.

(a) The board shall provide this letter within three (3) business days of receipt of a properly completed application.

(b) This letter shall serve as the applicant's temporary license until a regular license is issued.

(c) A copy of the board's letter shall be maintained by the applicant and be available for review upon request by the board's inspector or the Kentucky State Police.

(d) If the applicant is denied a license, the board shall issue a notice to the applicant and the applicant's school rescinding the applicant's temporary license for a skills instructor or agent.

Section 7.~~[4.]~~ All fees required by this administrative regulation shall be submitted by certified check or money order payable to the "Kentucky State Treasurer."

Section 8.~~[6.]~~ Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form PE 34, "Application for Commercial Driver License Training School Instructor", 2010 [PE-0008, August 2002] edition;

(b) Form PE 35, "Renewal Application for Commercial Driver License Training School Instructor", 2010 [PE-0009, August 2002] edition;

(c) Form PE 36, "Application for Commercial Driver License Training School Agent", 2010 [PE-0040, August 2002 edition]; and

(d) Form PE 37, "Renewal Application for Commercial Driver License Training School Agent", 2010 [PE-0044, August 2002] edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board for Proprietary Education, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK GABIS, Board Chair

APPROVED BY AGENCY: July 27, 2010

FILED WITH LRC: July 29, 2010 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 28, 2010 at 10 a.m., Eastern Time, at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wished to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business on September 30, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Angela Evans, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5600, fax (502) 564-6801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Angela Evans, Board Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does. This regulation establishes commercial driver license training school instructor and agent application and renewal procedures.

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to create commercial driver license training school instructor and agent application and renewal procedures.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is given the authority to establish the commercial driver license training schools instructor and agent application and renewal procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation makes the application and renewal process for CDL schools consistent with non-CDL schools.

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

(a) How the amendment will change this existing administrative regulation: This amended regulation updates the curriculum to be taught and creates two categories of instructors.

(b) The necessity of the amendment to this administrative regulation: This amended regulation is necessary to update the curriculum to be taught and establishes the qualifications for the skills instructor.

(c) How the amendment conforms to the content of the authorizing statutes: This amended regulation conforms to the content of the authorizing statute by establishing commercial driver license training school instructor and agent application and renewal procedures.

(d) How the amendment will assist in the effective and administration of the statutes: This amended regulation will clearly define and set forth the qualifications for the types of instructors of commercial driver license schools and inform the schools what is to be taught according to the current curriculum.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 23 commercial driver license training schools, the Kentucky Community and Technical College System, and approximately 125 instructors and agents of commercial driver license schools.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with the administrative regulation or amendment: The commercial driver license schools will have discretion in hiring instructors for the classroom, which

will increase the pool of instructors from which to choose since they do not have to meet the requirements of skills instructors.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The application and initial licensure fees will remain the same at \$20 nonrefundable application fee and \$150 initial licensure fee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The CDL schools will have a larger pool of potential instructors from which to choose without lowering the standards for skills instructors.

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

(a) Initially: Approximately \$200 to make copies of the application.

(b) On a continuing basis: Minimal

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded is funded by fees paid by licensees and applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: No increase in fees will not 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 maintains the fees that are currently in the existing regulation.

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply to all commercial driver license training schools.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Proprietary Education is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 165A.475, 165A.480, 165A.510.

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

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

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

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

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

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

PUBLIC PROTECTION CABINET Office of Occupations and Professions Board for Proprietary Education (Amendment)

201 KAR 40:080. Maintenance of student records, schedule of fees charged to students, contracts and agreements involving licensed commercial driver training schools, advertising and solicitation of students by commercial driver license training schools.

RELATES TO: KRS 165A.330(1), 165A.370, 165A.500, 165A.510

STATUTORY AUTHORITY: KRS 165A.340(3), 165A.510

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.500 and 165A.510 authorize the State Board for Proprietary Education to establish the standards for maintenance of student records, schedule of fees charged to students and refund policy, contracts and agreements involving licensed commercial driver license training schools, advertising and solicitation of students by commercial driver license training schools. This administrative regulation establishes these standards for commercial driver license training schools.

Section 1. Maintenance of Student Records and Student Roster. (1)(a) Each licensed commercial driver license training school shall maintain a permanent record of instruction given to each student to include the student instructional training progress report cards or sheets, transcripts, student written examination results, and yard and street student skills examination scores for so long as the commercial driver license training school holds a license or conducts business.

(b) If the commercial driver license training school discontinues operation, then the school shall comply with KRS 165A.390(5) and 201 KAR 40:155.

(2) The records to be maintained by the commercial driver license training school shall contain the following:

(a) Name and address of the commercial driver license training school;

(b) Name and address of the student;

(c) Photocopy or the number of the student's Kentucky CDL instruction permit license;

(d) Photocopy or the number of the student's CDL class A drivers license after completion of course requirements and successful completion of license examination requirements administered by the Kentucky State Police;

(e) The type and date of instruction given, whether classroom, yard, street, or behind-the-wheel, including the duration of instruction;

(f) The printed name and signature of the instructor on the student instruction card or progress record sheet or equivalent training record forms;

(g) Student's completed enrollment application;

(h) Student's completed student contract or enrollment agreement, including the student's signature and authorized school official's signature properly dated;

(i) Financial documents signed by the student including the student's completed loan agreement and accurate record of all fees paid to the school and government agencies;

(j) Student's attendance record;

(k) Student's progress report;

(l) Student's transcript including all examination grades and skills proficiency competency scores or evaluation received during course of instruction;

(m) ~~Student's completed independent self-study program, including grade;~~

~~(n)~~ Written examination and skills examination, including grade; and

~~(n)(e)~~ Results of medical fitness examination and DOT-required drug test.

(3) The school shall furnish each commercial driver license training student upon the student's request ~~of the student~~ a copy of his or her student instruction record if ~~when~~ he or she ceases taking instruction at the school.

(4) ~~[Each school shall create and maintain for each training class a student roster to be sent to the Kentucky State Police and the Kentucky Community and Technical College System during the first week of training that shall contain:~~

- ~~(a) Complete name of student, including any known nicknames or aliases, if any;~~
- ~~(b) Complete address of student;~~
- ~~(c) Social Security number;~~
- ~~(d) Date of birth of student;~~
- ~~(e) Class D Kentucky driver license number;~~
- ~~(f) Whether the student has previously enrolled in any commercial driver license training program, and if so, whether or not the student successfully completed the previous commercial driver license training program;~~
- ~~(g) Whether the student is enrolled in the commercial driver license training program as a refresher course; and~~
- ~~(h) The date the student is eligible for skills testing by the Kentucky Community and Technical College System.~~

~~(5) All student records, school facilities, and school equipment are subject to inspection by the board and its representatives upon request and without prior notice to the school.~~

Section 2. Schedule of Fees Charged to Students and Refund Policy. (1) Each licensed commercial driver license training school shall publish a schedule of fees charged to students for instruction to include as applicable:

- (a) Administrative fee;
- (b) Registration/application fee;
- (c) Tuition for instruction;
- (d) Commercial driver license permit fee;
- (e) Off-the-road and on-the-road training fees; ~~[and]~~
- (f) Room and board costs; and
- (g) Department of Transportation drug test and medical fitness examination.

(2) The schedule of fees shall be published:

- (a) In the school's catalog, brochure, and Web site;
- (b) In the student contract or enrollment agreement; and
- (c) Within the school's facility by being conspicuously displayed at the school.

(3) Each licensed commercial driver license training school shall establish and adhere to a refund policy to be published:

- (a) In the school's catalog;
- (b) In the student contract or enrollment agreement; and
- (c) Within the school's facility by being conspicuously displayed at the school.

(4) At least five (5) days before a prospective student signs a contract or enrollment agreement, the commercial driver license school shall provide to the prospective student:

- (a) The school catalog;
- (b) The student contract or enrollment agreement; and
- (c) The student loan agreement, if any.

Section 3. Contracts and Agreements Involving Licensed Commercial Driver License Training Schools. (1) Each licensed commercial driver license training school shall:

- (a) File and maintain with the board an accurate and current list of those persons authorized by the school to execute student enrollment contracts and student tuition loan agreements on behalf of the licensed commercial driver license training school including a sample of each person's signature;
- (b) Provide to each student who enters a contract or agreement with a licensed commercial driver training school a copy of the signed contract or enrollment agreement; and
- (c) File the original of each student contract or enrollment agreement in the permanent student record maintained by the school.

(2) All contracts or enrollment executed by the licensed commercial driver license training schools and its students shall contain the following information:

(a) The name and address of the school. If the school is conducted under an assumed name or is operated by a corporation, partnership, or association, the contract or enrollment agreement shall contain the name of the individual owners or names of the officers of the corporation, association, or members of the partner-

ship;

(b) A statement containing the following text in at least fourteen (14) point font: "This constitutes the entire agreement between the school and the student. No verbal agreements or promises shall be recognized by either the school or the student.";

(c) The school refund policy;

(d) A signature and date line for the student and an authorized school official;

(e) A complete description of all fees charged as set forth in Section 2 of this administrative regulation; and

(f) A statement containing the following text in at least fourteen (14) point font: "The Kentucky Revised Statutes and Kentucky Administrative Regulations governing licensed commercial driver training schools shall [are] available at the facility upon request."

Section 4. Advertising and Solicitation of Students by Commercial Driver License Training Schools. (1) A person, school, institution, organization, company, association, or partnership shall not advertise or advertise to recruit students unless licensed by the board.

(2) A licensed commercial driver license training school shall not use any name other than its licensed name, nor shall it advertise or imply that it is "supervised," "recommended," "accredited," or "endorsed" by the Kentucky State Board for Proprietary Education. A school may state "Licensed by the Kentucky State Board for Proprietary Education" in its advertisements.

(3) A licensed commercial driver training school shall not:

(a) Claim nor imply that it guarantees employment upon successful completion of the program;

(b) Guarantee or imply that it guarantees the student will receive a commercial driver license training permit or commercial driver license;

(c) Make any false, misleading, or deceptive claims or guarantees of expected annual income or employee benefits;

(d) Hold itself out as being any type of establishment other than an educational or training establishment;

(e) Use a name that is like or deceptively similar to a name used by another commercial driver license training school;

(f) Advertise or imply that instruction may be given to students who fail the program or examinations without charge to the student unless that instruction without examination is contained in the student contract or enrollment agreement; and

(g) Advertise or solicit in the "help wanted" section of any newspaper or periodical.

(4) A licensed commercial driver license training school shall submit a copy of all advertisements and directory listings to the board at least thirty (30) days prior to the scheduled publishing date.

Section 5. Inspections of Commercial Motor Vehicles Used by Commercial Driver License Training Schools, Including Mandatory Equipment and Out-of-Service Criteria. (1) Annual inspection. ~~[The Kentucky State Police shall at least annually inspect all commercial driver license training vehicles.]~~ The school shall maintain a copy of the results of the Kentucky State Police's annual inspections of the school's vehicle inventory, as listed with the board [inspection in the vehicle].

(2) In order to be approved, the vehicle shall be:

(a) Owned or leased by the licensed school;

(b) In safe operating condition;

(c) ~~[Not more than ten (10) years old for vehicles used for on-the-road instruction, and not more than (15) years old for vehicles used for off-the-road instruction;~~

~~(d)]~~ Included on the school's liability insurance policy as mandated by KRS 165A.475(1)(d);

~~(d)]~~ Equipped with seat belts for each vehicle occupant as established by KRS 189.125;

~~(e)]~~ Equipped with functioning side-view and rear-view mirrors;

~~(f)]~~ Identified and clearly displayed on the front, sides, and rear of the vehicle, in letters not smaller than six (6) inches in height and in a color vividly contrasting with the color of the vehicle, the following:

1. Name of the commercial driver license training school; and

2. Words "Student Driver."

(3) Expiration of safety inspection and notification of vehicle changes. The commercial driver license training school shall:

(a) Maintain proof that the vehicle is inspected by the Kentucky State Police ~~[board representative]~~ annually and passes the inspection;

(b) Remove from use any vehicle ~~that~~ which has not passed the inspection by the Kentucky State Police; and

(c) File with the board written notice ~~if~~ when a vehicle has been added or deleted from the school's motor vehicle fleet and have submitted to the board a revised insurance policy as mandated by KRS 165A.475(1)(d) no later than five (5) business days from the date that the vehicle was added or deleted from the school's motor vehicle fleet.

MARK GABIS, Board Chair

APPROVED BY AGENCY: July 27, 2010

FILED WITH LRC: July 29, 2010 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 28, 2010 at 10 a.m., Eastern Time, at the Office of Occupations and Professions, 911 Leewood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wished to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business on September 30, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Angela Evans, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5600, fax (502) 564-6801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Angela Evans, Board Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does. This regulation establishes the requirements for maintenance of student records, schedule of fees charged to students, contracts and agreements involving licensed commercial driver training schools, advertising and solicitation of students by commercial driver license training schools.

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to establish the requirements for maintenance of student records, schedule of fees charged to students, contracts and agreements involving licensed commercial driver training schools, advertising and solicitation of students by commercial driver license training schools.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is given the authority to establish the requirements for maintenance of student records, schedule of fees charged to students, contracts and agreements involving licensed commercial driver training schools, advertising and solicitation of students by commercial driver license training schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the requirements for maintenance of student records, schedule of fees charged to students, contracts and agreements involving licensed commercial driver training schools, advertising and solicitation of students by commercial driver license training schools.

(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 eliminates the reference to the independent self-study program, which no longer exists, adds progress reports to the list of documents required to be maintained, eliminates the requirement to send a class roster to the Kentucky State Police and eliminates the 10 year age limit for vehicles.

(b) The necessity of the amendment to this administrative regulation: This amended regulation is necessary because it requires schools to maintain additional records that are very helpful in reviewing complaints and allows vehicles over 10 years old that pass KSP inspection to remain in use as training vehicles.

(c) How the amendment conforms to the content of the authorizing statutes: This amended regulation conforms to the content of the authorizing statute by establishes the requirements for maintenance of student records, schedule of fees charged to students, contracts and agreements involving licensed commercial driver training schools, advertising and solicitation of students by commercial driver license training schools.

(d) How the amendment will assist in the effective and administration of the statutes: This amended regulation will more clearly list the documents required to be maintained by schools and allow schools to use older vehicles if they pass KSP inspection.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 23 commercial driver license training schools, the Kentucky Community and Technical College System

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with the administrative regulation or amendment: establishes the requirements for maintenance of student records, schedule of fees charged to students, contracts and agreements involving licensed commercial driver training schools, advertising and solicitation of students by commercial driver license training schools.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amended regulation will more clearly list the documents required to be maintained by schools and allow schools to use older vehicles if they pass KSP inspection.

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

(a) Initially: Minimal

(b) On a continuing basis: Minimal

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded is funded by fees paid by licensees and applicants.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply to all commercial driver license training schools.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Proprietary Education is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.

3. Identify each state or federal statute or federal regulation

that requires or authorizes the action taken by the administrative regulation. KRS 165A.510

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

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

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

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

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

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

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

201 KAR 40:100. Standards for Kentucky resident commercial driver training school facilities.

RELATES TO: KRS 165A.330(1), 165A.370, 165A.510(1)

STATUTORY AUTHORITY: KRS 165A.340(3), 165A.510

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.510(1) authorizes the board to promulgate administrative regulations to set standards for CDL training school facilities. This administrative regulation establishes the board's policy regarding standards for Kentucky resident commercial driver training school facilities.

Section 1. The following standards shall apply to Kentucky resident CDL driver training school office facilities:

(1) A Kentucky resident CDL training school location shall have and maintain an established place of business in the Commonwealth of Kentucky.

(2) The established place of business of each Kentucky resident CDL driver training school shall:

(a) Be owned or leased by the driver training school;

(b) Regularly occupied; and

(c) Solely used by that driver training school for the business of:

1. CDL driver training instructions for hire;

2. Preparing members of the public for examination for a commercial motor vehicle operator's license; and

3. Instruction of knowledge and skills for entry level tractor and trailer drivers or commercial motor vehicle operators.

(3) The established place of business of each Kentucky resident CDL driver training school shall be located in a district zoned for business or commercial purposes. The Kentucky resident CDL driver training school office shall have a permanent sign displaying the licensed school name. If the classroom or training yard is at a different address, it shall also have a permanent sign meeting the same criteria.

(4) The established place of business or advertised address of any Kentucky resident CDL driver training school shall not consist of or include a house trailer, residence, tent, temporary address, office space only, a room or rooms in a hotel, rooming house or apartment house, or premises occupied by a single or multiple unit dwelling house. Furthermore, a modular building or structure for use as a classroom or office shall be permanently affixed to the property and meet all applicable building codes.

(5) The Kentucky resident CDL training school, office, and classes shall be operated by responsible personnel during stated

office hours and shall be open to inspection of the premises, facilities, records and vehicles by any authorized representative of the board during this time.

(6) The Kentucky resident CDL training school shall have a business telephone used exclusively for the operation of the driving school and operational during the stated office hours.

(7) A Kentucky resident CDL driver training school shall not transfer its license without filing the Application to Transfer Ownership of a Proprietary School, incorporated by reference, for prior approval of the board. There will be a \$500 fee for a transfer of ownership.

(8) Should a Kentucky resident CDL driver training school discontinue operations, the license and applicable ~~all~~ student records shall be surrendered ~~immediately~~ to the board, at the expense of the licensee, in accordance with 201 KAR 40:155.

(9) A branch or satellite Kentucky resident CDL driver training school shall be licensed as an independent Kentucky resident CDL driver training school and meet all of the requirements of the board as provided for in KRS Chapter 165A and 201 KAR 40:040 to 201 KAR 40:090.

Section 2. The following standards shall apply to Kentucky resident CDL driver training school classroom facilities:

(1) The classroom facility of each Kentucky resident CDL driver training school shall be reasonably near its office facility and within thirty (30) minutes normal driving time of that facility.

(2) The classroom shall contain sufficient space, ~~and~~ equipment, and seating to carry on the business of classroom instruction for students enrolled in the Kentucky resident CDL driver training school, and preparation of students for examination for a commercial motor vehicle operator's license.

(3) The classroom facility shall have adequate lighting, heating, ventilation, sanitation facilities, and shall comply with all state and local laws relating to public health, safety and sanitation.

(4) The classroom facility shall contain the following equipment and supplies:

(a) Individual desks or tables with writing surfaces that, if required, could accommodate up to thirty (30) classroom students, or the school's maximum number, if less than thirty (30) classroom students, based on available space and occupancy limits established by applicable fire code (for not less than eight (8) students);

(b) Adequate blackboards or whiteboards which are visible from student ~~all~~ seating areas;

(c) Adequate visual aids, charts, and diagrams or pictures relating to the operation of commercial motor vehicles and traffic laws;

(d) Other devices that may aid in acquainting students with state and federal traffic laws and prepare them to safely operate commercial motor vehicles;

(e) One (1) of the following:

1. Overhead projector or multimedia projector; or

2. A thirty-five (35) millimeter slide projector and slides; or

3. A video/audio display screen of not less than nineteen (19) inches diagonal measure, capable of operation in conjunction with electronic media ~~a video tape~~ for providing driver training instruction; and

(f) ~~(e)~~ All Kentucky Revised Statutes and administrative regulations governing CDL driver training schools, commercial motor vehicle operator license requirements and federal motor carrier rules and regulations, shall be prominently displayed so as to be accessible to applicants for enrollment and all students.

(5) In addition to the foregoing, the following are suggested teaching aids:

(a) A reaction time testing device;

(b) Peripheral vision testing device;

(c) Magnetic traffic boards; and

(d) Other devices that may aid in acquainting students with state and federal traffic laws and prepare them to safely operate commercial motor vehicles.

Section 3. Relocation of a Licensed Kentucky Resident CDL Driver Training School. Prior to relocating any Kentucky resident CDL driver training school office, classroom facility, behind-the-wheel training facility or location, or equipment thereof, the Ken-

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tucky resident CDL driver training school shall:

- (1) Submit a completed Application to Change the Location of a Proprietary School;
- (2) Submit documentation indicating the new location is in compliance with all fire and safety codes;
- (3) Submit the required change of school location application fee of \$500 by certified check or money order made payable to the Kentucky State Treasurer; and
- (4) Complete a successful inspection by the Kentucky State Police pursuant to the procedures outlined by KRS 165A.475(4).

Section 5. Incorporation by Reference. (1) "Application to Change the Location of a Proprietary School", 7/2003 edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Proprietary Education, 911 Leawood drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK GABIS, Board Chair

APPROVED BY AGENCY: July 27, 2010

FILED WITH LRC: July 29, 2010 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 28, 2010 at 10 a.m., Eastern Time, at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wished to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business on September 30, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Angela Evans, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5600, fax (502) 564-6801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Angela Evans, Board Counsel

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does. This regulation establishes the standards for Kentucky resident commercial driver training school facilities and corrects the names of forms PE-21 and PE-23 in the regulation.
 - (b) The necessity of this administrative regulation: The necessity of this administrative regulation is to establish the standards for Kentucky resident commercial driver training school facilities.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is given the authority to establish the standards for Kentucky resident commercial driver training school facilities.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the standards for Kentucky resident commercial driver training school facilities.
- (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 eliminates the list of suggested teach aids and broadens the type of teaching aids allowed.
 - (b) The necessity of the amendment to this administrative regulation: This amended regulation is necessary to broaden the type of teaching aids permitted to be used.
 - (c) How the amendment conforms to the content of the authorizing statutes: This amended regulation conforms to the content of

the authorizing statute by establishing the standards for Kentucky resident commercial driver training school facilities.

(d) How the amendment will assist in the effective and administration of the statutes: This amended regulation will broaden the type of teaching aids allowed to be used in the classroom.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 23 commercial driver license training schools, the Kentucky Community and Technical College System

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with the administrative regulation or amendment: The administrative regulation will require commercial driver license training schools to conform to facility standards.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amended regulation will allow instructors to use modern technological devices in the classroom.

(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: The board's operation is funded is funded by fees paid by licensees and applicants.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply to all commercial driver license training schools.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes
 2. What units, parts or divisions of state or local government (including cities, counties fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Proprietary Education is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.
 3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 165A.510
 4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments or school districts) for the first full year the administrative regulation is to be in effect. N/A
 - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for the first year? N/A
 - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for subsequent years? N/A
 - (c) How much will it cost to administer this program for the first year? N/A
 - (d) How much will it cost to administer this program for subsequent years? N/A
- Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): N/A
Expenditures (+/-): N/A
Other Explanation: N/A

**GENERAL GOVERNMENT CABINET
Board of Licensure for Massage Therapy
(Amendment)**

201 KAR 42:040. Renewal and reinstatement procedures.

RELATES TO: KRS 309.357(3), (4), (5), 309.361
STATUTORY AUTHORITY: KRS 309.355(1), (3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.355(3) requires the board to promulgate administrative regulations to implement KRS 309.350 to 309.364. KRS 309.357(3) requires all licenses to be renewed. This administrative regulation provides directions for the renewal of these licenses.

Section 1. A license to practice massage therapy may be renewed upon:

(1) Payment of the biennial renewal fee as established in 201 KAR 42:020, Section 2(2) on or before the anniversary date of issue of license; and

(2) Submission of the "Application for Renewal" form with the following written information to the board:

(a) Current complete home address and telephone number;
(b) Current complete name, address, and telephone number of each location in which massage therapy service is provided.

(c) Documentation of completion of continuing education requirements during the licensure renewal period established in 201 KAR 42:110.

(d) Written confirmation that, since the license was issued or renewed, the licensee has not:

1. Been convicted of a felony;
2. Had his or her license disciplined and is not currently under disciplinary review in another state;
3. Engaged in any other unprofessional conduct, stated in KRS 309.362(1); or
4. Defaulted on the repayment obligation of financial aid programs administered by the Kentucky Higher Education Assistance Authority (KHEAA) per KRS 164.772.

Section 2. A licensee convicted of a felony or disciplined in the interim period between issuance and renewal of the license, or between renewal periods, shall submit notice of the conviction or discipline to the board prior to license renewal.

Section 3. If payment and complete information are not received by the board on or before the anniversary date of issue of license, the license shall expire and the person shall not work as a massage therapist in Kentucky.

Section 4. An expired license may be reinstated within two (2) years of expiration if the applicant submits:

(1) A completed "Application for Renewal of License as a Massage Therapist" form;

(2) Documentation of successful completion of twenty-four (24) hours of continuing professional education, which:

(a) Includes studies in ethics, business practices, science, and techniques related to massage therapy;

(b) Have been credited within two (2) years prior to the renewal deadline; and

(c) Have not been previously used within the same renewal period to satisfy Kentucky license renewal requirements; and

(3) The appropriate fee for renewal, as required by 201 KAR 42:020, Section 2(2)(a), (b), or (c).

Section 5. (1) Upon initial licensing, a licensee shall be furnished:

(a) A billfold license identification card; and
(b) A wall certificate to be displayed at the primary massage therapy service location.

(2) Upon each subsequent renewal, a licensee shall be fur-

nished a billfold license identification card.

Section 6. Reactivation Requirement for Inactive Status Massage Therapist. (1)(a) Before the expiration of five (5) years of inactive status, a licensee requesting to return to active status shall:

1. Provide proof to the board of continuing education required by KRS 309.362(3);

2. Complete the Application for Renewal; and

3. Pay the fee prescribed by 201 KAR 42:020, Section 2(7).

(b) The continuing education hours provided pursuant to paragraph (a)1 of this subsection may be used for the next regular renewal period.

(2) After more than five (5) years of inactive status, a person requesting to return to active status shall reapply and meet the requirements of 309.358(2) as provided by KRS 309.362(3).

Section 7. Incorporation by Reference. (1) "Application for Renewal of License as a Massage Therapist", August 2010 [~~July 2006~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, (502) 564-3296, Monday through Friday, 8 a.m. to 4:30 p.m.

THERESA CRISLER, Board Chair

APPROVED BY AGENCY:

FILED WITH LRC: August 9, 2010

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2010 at 9 a.m. (EST) at 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Adriana Lang, Board Administrator, Kentucky Board of Licensure for Massage Therapy, P.O. Box 1370, Frankfort, Kentucky 40602.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael West

(1) Provide a brief summary of

(a) What this administrative regulation does: This regulation establishes renewal and reinstatement procedures for massage therapists.

(b) The necessity of this administrative regulation: This regulation is necessary to implement the provisions KRS 357(3).

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by establishing procedures for the renewal of licenses.

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

(a) How the amendment will change this existing administrative regulation: A form incorporated by reference will be changed to clarify procedures.

(b) The necessity of the amendment to this administrative regulation: The necessity of amendment is to clarify procedures listed on a form incorporated by reference.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment will clarify submission of supporting documentation for continuing education.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will clarify supporting documentation to be supplied on renewal on licensure.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 2,149 licensed massage therapists.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The individuals identified in question (3) will be on greater notice regarding the application renewal process.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs will be minimal if any.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be on greater notice regarding the application renewal process.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by licensees.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.355(3)

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

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

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

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

RELATES TO: KRS 150.170,~~[150.175,]~~ 150.180,~~[150.340,]~~ 150.360, 150.370, 150.399, 150.400, 150.415, 150.416, 150.990
STATUTORY AUTHORITY: KRS 150.025, 150.175~~[150.120(4)],~~ 150.410

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department to establish seasons for the taking of game and fish and to regulate bag and possession limits, the methods of taking and the devices used to take wildlife. KRS 150.175 authorizes the department to issue licenses, permits, and tags for hunting and trapping~~[KRS 150.120(4) authorizes the department to prohibit the possession of any illegal devices for the taking of wildlife].~~ KRS 150.410 authorizes the department to regulate trap tags, trap visitation, and trap placement to protect domestic animals. This administrative regulation establishes seasons, bag limits, and legal methods for hunting and trapping furbearers~~[is necessary to ensure the permanent and continued supply of furbearer species by protecting them from overharvest and also establishes safe standards for the proper use and placement of traps].~~

Section 1. Definitions. (1) "Body-gripping trap" means a commercially manufactured spring-loaded trap designed to kill the animal upon capture.

(2) "Dry land set" means a trap that is not set to submerge an animal in water~~[drown an animal]~~ upon capture.

(3) "Foothold trap" means a commercially manufactured spring-loaded trap with smooth, metallic jaws that close upon an animal's foot.

(4) "Furbearer" means mink, muskrat, beaver, raccoon, opossum, gray fox, red fox, least weasel, long-tailed weasel, river otter, bobcat, coyote, and striped skunk.

(5) "Hunter" means a person hunting furbearers with gun, gun and dog, bow and arrow, dog, or by falconry.

~~(6) "Modern gun deer season" means the season established by 301 KAR 2:172.~~

~~(7) "Snare" means a wire, cable, or string with a knot, loop, or a single piece closing device which is not power or spring assisted.~~

~~(7)(4) "Squaller" means a hand-operated, mouth-operated, or electronic call capable of mimicking the vocalizations of furbearers.~~

~~(8)(4) "Trap" means a body-gripping trap, box trap, deadfall, foothold trap, snare, or wire cage trap used to catch furbearers.~~

~~(9)(4) "Water set" means a trap set to submerge an animal in water~~[drown an animal]~~ upon capture.~~

~~(10)(44) "Youth" means a person who has not reached sixteen (16) years of age.~~

Section 2. Hunting and Trapping Seasons. Except as specified in 301 KAR 2:049 or 301 KAR 2:125, a person shall not take the following wildlife except during the dates specified in this section:

(1) Raccoon and opossum:

(a) Hunting ~~from:~~[-] November 1 through the last day of February. During the modern gun deer season, as established in 301 KAR 2:172 a raccoon or opossum hunter shall not ~~take:~~

~~1. Take] raccoons or opossums during daylight hours;~~~~[or~~
~~2. Carry a gun except a .22 caliber rimfire gun, except as provided by KRS 237.110.]~~

(b) Trapping: from noon on~~[—noon]~~ the third day of the modern gun deer season through the last day of February.

(2) Coyote:

(a) Hunting: year round.

(b) Trapping: from noon on~~[—noon]~~ the third day of modern gun deer season through the last day of February.

(3) Bobcat:

(a) Hunting: from noon on~~[—noon]~~ the third Saturday in November through January 31.

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(b) Trapping: ~~from noon on [—noon]~~ the third day of the modern gun deer season through the last day of February.

(4) All other furbearers: ~~from noon on [—noon]~~ the third day of the modern gun deer season through the last day of February.

(5) Furbearers taken by falconry: September 1 through March 30.

(6) There shall not be a closed season on:

(a) Chasing red and gray foxes during daylight hours for sport and not to kill; and

(b) Chasing raccoons or opossums for sport and not to kill.

(7) For seven (7) consecutive days beginning on the Saturday after Christmas, a youth may hunt or trap furbearers without a hunting or trapping license, but all other statewide requirements shall apply [license. Statewide requirements and bag limits apply].

Section 3. Bag Limits. (1) There shall not be a bag limit on furbearers except for:

(a) Bobcats;

(b) River otters; and

(c) ~~bobcats, river otters, and~~ Those taken by falconry.

(2) A person shall not take more than five (5) bobcats per season, no more than three (3) of which shall be taken with a gun.

(3) A person shall not take more than six (6) river otters per season.

(4) A falconer hunting within the falconry season, but outside the dates specified in Section 2(1) through (4) of this administrative regulation, shall not take more than two (2) of any furbearer per day.

Section 4. Legal Hours of Take. ~~[A person shall not take furbearers by hunting except during the times specified in this section.]~~ (1) Furbearers: daylight hours only, except for raccoon and opossum.

(2) Raccoon and opossum: day or night, except that a person shall not take raccoons or opossums during daylight hours during the modern gun deer season, as established in 301 KAR 2:172.

Section 5. Use of Calls. A hunter may use a hand- or mouth-operated call, electronic call, or any other attracting device during a furbearer hunting season.

Section 6. ~~[A hunter shall not carry buckshot while hunting, except as authorized by KRS 237.110.]~~

Section 7. Raccoon and Opossum Restrictions. (1) A hunter shall not use a light from a boat to take raccoon or opossum.

(2) Except as specified in subsection (3) of this section, a person shall not use the following while chasing raccoon or opossum from noon on March 1 through October 31:

(a) A firearm; ~~[chasing raccoon or opossum from noon, March 1 through October 31 shall not use or carry a:~~

(a) ~~Firearm or concealed deadly weapon unless authorized by KRS 237.110;]~~

(b) Slingshot;

(c) Tree climber;

(d) Squaller; or

(e) Any device to kill, injure, or force ~~[Similar device capable of killing, injuring or forcing]~~ a raccoon or opossum from a tree or den.

(3) A person participating in a department-approved raccoon dog trial sanctioned by one (1) of the following organizations may use a squaller:

(a) The American Coon Hunters Association;

(b) The American Kennel Club/American Coon Hunters Association;

(c) The National Kennel Club;

(d) The Professional Kennel Club;

(e) The United Coon Hunters Association; and

(f) The United Kennel Club.

Section 7. Trapping Methods. (1) ~~A person who is [8. Trapping Methods. (1) A person]~~ trapping on dry land shall not:

(a) Set traps closer than ten (10) feet apart; or

(b) Use any trap except for the following; ~~[a trap except a:]~~

1. Deadfall;

2. Wire cage or box trap;

3. Foothold trap with a maximum inside jaw spread of six (6) inches measured perpendicular to the hinges;

4. Body-gripping trap with a maximum inside jaw spread of seven and one-half (7.5) inches measured parallel with the trigger; or

5. A snare.

(2) There shall be no restrictions on the size or type of trap used as a water set.

(3) A trap shall not be set in a trail or path commonly used by a human or a domestic animal.

(4) A trapper may use lights from a boat or a vehicle.

Section 8. ~~[9.]~~ Harvest Recording. Immediately after taking a river otter or bobcat, a person shall:

(1) Record, in writing, the species, date taken, county where taken, and sex of the river otter or bobcat before moving the carcass from the site where taken. This information shall be logged and registered on one (1) of the following:

(a) Hunter's log section on the reverse side of a license or permit;

(b) Hunter's log from the current hunting and trapping guide;

(c) Hunter's log printed from the Internet;

(d) Hunter's log available from any KDSS agent; or

(e) An index or similar card; and

(2) Retain and possess the completed hunter's log if the hunter is in the field during the current season.

Section 9. ~~[10.]~~ Checking a River Otter or Bobcat. (1) A person shall check a harvested river otter or bobcat by calling the toll free number listed in the current hunting and trapping guide on the day the river otter or bobcat is harvested and:

(a) Providing the information requested by the automated check-in system; and

(b) Writing the confirmation number given by the automated check-in system on the hunter's log described in Section 8 ~~[9]~~ of this administrative regulation.

(2) A person wishing to sell the raw fur of a river otter or bobcat to a licensed fur processor, fur buyer, or taxidermist or wishing to export a river otter or bobcat pelt outside the United States shall:

(a) Call the department's toll-free information number and request a Convention on International Trade of Endangered Species of Flora and Fauna (CITES) tag by providing:

1. A valid confirmation number as described in subsection (1) of this section; and

2. A street address where the tag is to be mailed; or

(b) Access the department's Web site at <http://fw.ky.gov/> complete and submit the CITES tag request form.

(3) If a harvested river otter or bobcat leaves the possession of a hunter or trapper and does not have a CITES tag attached to it, the hunter or trapper shall attach a handmade tag to the carcass, that contains;

(a) The confirmation number;

(b) The hunter or trapper's name; and

(c) The hunter or trapper's phone number.

(4) A person shall not provide false information if completing the hunter's log, checking a river otter or bobcat, or creating a carcass tag.

(5) A CITES tag shall be attached to the raw fur, pelt, or unskinned carcass per the instructions provided by the department and remain with the pelt until it is processed or exported outside the United States.

(6) Possession of an unused CITES tag is prohibited unless authorized by the department.

Section 10. ~~[11.]~~ Transporting and Processing a River Otter or Bobcat. (1) A person shall not sell the raw fur of a river otter or bobcat except to a licensed:

(a) Fur buyer;

(b) Fur processor; or

(c) Taxidermist.

(2) A taxidermist, fur buyer, or fur processor shall:

(a) Not accept a river otter or bobcat carcass or any part of a river otter or bobcat without a proper carcass tag or CITES tag

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described in Section 9[40] of this administrative regulation; and

- (b) Keep the following information from a hunter or trapper:
 1. Name;
 2. Address;
 3. Confirmation number or CITES tag number; and
 4. Date received for each river otter or bobcat.

Section 11[42] Trap Tags. (1) Each trap shall have a metal tag attached to it that clearly shows one (1) of the following:

- (a) The name and address of the person setting, using, or maintaining the trap; or
- (b) A wildlife identification number issued by the department and the 1-800-25ALERT department hotline phone number.

(2) A person may apply for a wildlife identification number by:

- (a) Accessing the department's Web site at <http://fw.ky.gov/>; or
- (b) Calling the department's information center at 1-800-858-1549.

(3) The following information shall be required for a person to apply for a wildlife identification number:

- (a) Name;
- (b) Current home address;
- (c) Social Security number;
- (d) Current phone number;
- (e) Date of birth; and
- (f) Driver's license number, if available.

(4) A person shall:

- (a) Not use a trap tag that has an inaccurate or outdated address;
 - (b) Not use a trap tag that has a wildlife identification number that corresponds to an inaccurate or outdated address or phone number; and
 - (c) Contact the department to provide updated address and phone number.
- (5) A wildlife identification number is valid for the life of the holder.

BENJY KINMAN, Deputy Commissioner

For JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: June 11, 2010

FILED WITH LRC: August 12, 2010 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2010, at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by September 30, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-9136.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes hunting and trapping seasons, methods of taking, bag limits, harvest recording procedures, and checking requirements for furbearer species in Kentucky.

(b) The necessity of this administrative regulation: To allow for safe and effective harvest and related records-keeping for the long-

term conservation and management of furbearer populations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the department to promulgate administrative regulations governing game and fish species, including seasons and limits. KRS 150.175 authorizes the department to issue licenses, permits, and tags for hunting and trapping. KRS 150.410(1) authorizes the department to require a metal trap tag that has the name and address of the trapper or a unique wildlife identification number that corresponds to the trapper.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will establish the seasons, bag limits, and methods of take used to manage statewide furbearer populations and defining the use of wildlife identification numbers on trap tags.

(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 the prohibition on use of buckshot and the carrying of certain weapons.

(b) The necessity of the amendment to this administrative regulation: This amendment was necessary to conform with the new provisions of Senate Bill 64 and to liberalize the use of effective ammunition for taking furbearer species without harming the populations.

(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 those who hunt furbearer species could potentially benefit from this regulation. Coyote hunters will benefit the most through liberalized hunting methods.

(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: Furbearer hunters and trappers will not be required to take any additional actions to comply with this amendment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Coyote hunters will benefit from the more liberal ammunition requirements.

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

(a) Initially: There will be no additional cost to the department to implement this administrative regulation.

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

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

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

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

(9) TIERING: Is tiering applied? No. Tiering was not used because all furbearer trappers are subject to the same seasons, methods of taking, bag limits, harvest recording procedures, and checking requirements.

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FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025 authorizes the department to promulgate administrative regulations for hunting and trapping seasons, methods of taking, bag limits, harvest recording procedures, and checking requirements for furbearing species in Kentucky. KRS 150.410 authorizes metal trap tag requirements. KRS 150.175 authorizes the department to issue licenses and permits for hunting and trapping.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No additional revenue 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 additional 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 (+/-): None; see 4(a) and (b) above.

Expenditures (+/-): None; see 4(c) and (d) above

Other Explanation:

GENERAL GOVERNMENT Department of Agriculture Division of Regulation and Inspection (Amendment)

302 KAR 34:020. Bonding requirements.

RELATES TO: KRS 251.451, 251.720

STATUTORY AUTHORITY: KRS 251.700

NECESSITY, FUNCTION, AND CONFORMITY: To clarify KRS 251.720 relating to the bonding requirements for a grain dealer who is also in the business of storing grain and is a warehouseman.

Section 1. Any grain dealer who is also in the business of storing grain and is a warehouseman subject to KRS 251.720(3) shall:

(1) First compute his bond in principal amount pursuant to the formula for computing a grain dealer bond as set out in KRS 251.720(3). Such bond shall not be less than \$25,000 nor more than \$100,000 except as otherwise authorized by this administrative regulation. A certificate of deposit payable to the commissioner, as trustee, or an irrevocable letter of credit, may be filed with the department in lieu of a surety bond. The principal amount of the certificate of deposit, or irrevocable letter of credit, shall be the same as that required for a surety bond under this administrative regulation and the interest thereon shall be made payable to the purchaser thereof.

(2) Next compute the required~~[his]~~ bond by multiplying the total

maximum bushel capacity of his warehouse facility by twenty-five (25) cents as set out in KRS 251.451(1) which shall constitute the first step in considering storage capacity and storage obligations required by KRS 251.720(10). A certificate of deposit payable to the commissioner, as trustee, or irrevocable letter of credit, may be filed with the department in lieu of a surety bond. The principal amount of the certificate of deposit, or irrevocable letter of credit, shall be the same as that required for a surety bond under this administrative regulation and the interest thereon shall be made payable to the purchaser thereof. All forms of surety must be submitted with or upon the appropriate supplemental surety document supplied by the department.

Section 2. If the dollar amount computed pursuant to Section 1(1) of this administrative regulation is larger than the dollar amount computed pursuant to Section 1(2) of this administrative regulation then the bond computation figured pursuant to Section 1(1) of this administrative regulation shall be the dollar amount of the bond required pursuant to KRS 251.720(10). If the person whose bond amount is computed pursuant to Section 1(1) of this administrative regulation and required pursuant to this section is of the opinion that his net worth and assets are sufficient to provide payment to producers for grain purchased or stored, that person may request the commissioner to be relieved of a portion of the bond in accordance with the formula for bond reduction set out in KRS 251.720(6). Such request for bond reduction shall include all information that is or may be required pursuant to KRS 251.720(6).

Section 3. If the dollar amount computed pursuant to Section 1(2) of this administrative regulation is larger than the dollar amount computed pursuant to Section 1(1) of this administrative regulation then the bond computation figured pursuant to Section 1(2) of this administrative regulation shall be the dollar amount of the bond required pursuant to KRS 251.720(10). Such bond computation shall constitute the second step in considering storage capacity and storage obligations pursuant to KRS 251.720(10) and shall be required if this section is used to compute the bond required by this administrative regulation.~~[If the person whose bond amount is computed pursuant to Section 1(2) of this administrative regulation and required pursuant to this section is of the opinion that his net worth and assets are sufficient to provide payment to producers for grain purchased or stored, that person may request the commissioner to be relieved of a portion of \$100,000 of the bond required by this section, which represents the maximum amount of bond required by a grain dealer without consideration of storage capacity and storage obligations required by KRS 251.720(10). The maximum bond reduction allowed pursuant to this section shall be \$75,000. The formula for such bond reduction shall be in accordance with the bond reduction formula set out in KRS 251.720(6). Any request for bond reduction shall include all information that is or may be required pursuant to KRS 251.720(6).]~~

Section 4. Any bond written ~~[or]~~ certificate of deposit, or irrevocable letter of credit prepared pursuant to this administrative regulation must be written and executed so as to cover losses to claimants resulting from the failure of a grain warehouseman and/or the failure of a grain dealer as defined in Chapter 251 of the Kentucky Revised Statutes. Such bond must be written so as to cover loss for both stored grain and all other grain which has been sold but for which payment has not been received at the time of the grain dealer and/or grain warehouse failure.

Section 5. Entities licensed as a warehouse shall have its bond computed pursuant to KRS 251.451(1). Persons licensed as a grain dealer shall have their bond computed pursuant to KRS 251.720(6); except as stipulated by KRS 251.720(9) and 302 KAR 34:02 (1),(2),(3); furthermore; the bond filed with the department shall not be less than \$25,000, nor more than \$1,000,000, except as otherwise authorized by KRS 251.720.

Section 6. For the purpose of computing a warehouseman bond, capacity shall be defined as the department approved storage capacity designated by the warehouse as storage for produc-

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er stored grain only, or for grain held by the warehouse as surety for a forward pricing obligation as referenced by KRS 251.485(2).

RICHIE FARMER, Commissioner

APPROVED BY AGENCY: August 13, 2010

FILED WITH LRC: August 12, 2010 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2010, at 10 a.m., 107 Corporate Drive, 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 was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-4696, fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

CONTACT PERSON: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation modifies the calculation for the bond requirement, and adds an irrevocable letter of credit as accepted security.

(b) The necessity of this administrative regulation: This is necessary to provide consistency with the statute to not create an undue burden on grain companies.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 251.700 authorizes the Commissioner to establish regulations for grain bonds. This amendment adds an irrevocable letter of credit as accepted security, as provided for in KRS 251.451.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This is necessary to provide consistency with the statute as to an irrevocable letter of credit.

(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 modifies the calculation for the bond requirement, and adds an irrevocable letter of credit as accepted security.

(b) The necessity of the amendment to the administrative regulation: This is necessary to provide consistency with the statute to not create an undue burden on grain companies.

(c) How this amendment conforms to the content of the authorizing statutes: KRS 251.700 authorizes the commissioner to establish regulations for grain bonds. This amendment adds an irrevocable letter of credit as accepted security, as provided for in KRS 251.451.

(d) How will this amendment assist in the effective administration of the statutes: This is necessary to provide consistency with the statute as to an irrevocable letter of credit.

(3) List the type and number of individuals, businesses, organizations, or state and local governments 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: N/A

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A

(c) As a result of compliance, what benefits will accrue to the

entities identified in question (3):

(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.

(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 fees are associated with this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes no fees directly or indirectly.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 251.

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 impact in any way the current expenditures or revenues of the KDA.

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

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

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

(d) How much will it cost to administer this program for subsequent years? No additional costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

503 KAR 1:170. Career Development Program.

RELATES TO: KRS 15.310

STATUTORY AUTHORITY: KRS 15.330(1)(d), (h)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.330(1)(d) authorizes the Kentucky Law Enforcement Council (KLEC) to establish and prescribe minimum standards and qualifications for voluntary career development programs for certified peace officers and telecommunicators. This administrative regulation establishes a Career Development Program for Kentucky certified peace officers and telecommunicators.

Section 1. Definitions. (1) "Chief executive" means the highest level position in a law enforcement agency with direct operational and administrative responsibility for the policies and performance of the agency.

(2) "Conceptual skills course" means a course that emphasizes

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planning, organization, goal setting abilities, strategic orientation, or provides material related to higher order abstractions that force conceptual thinking.

(3) "Executive" means a position in the immediate line of authority under the chief executive who has the delegated responsibility for operational and administrative functions of the agency or division.

(4) "Human skills course" means a course relating to cultural diversity, problem solving, leadership, interpersonal communication, group communication, or training abilities.

(5) "KLEC" means the Kentucky Law Enforcement Council.

(6) "Manager" means a position within law enforcement or telecommunications:

(a) Between the executive and supervisor positions; and

(b) Which is responsible for the supervision of supervisory employees, and possibly involving planning, organization, public relations, discipline, or general administrative work.

(7) "Supervisor" means a position which is responsible:

(a) For the direct supervision of nonsupervisory personnel; and

(b) Possibly for line duties in law enforcement or telecommunications.

(8) "Technical skills course" means a course relating to operational or tactical abilities.

Section 2. Skill Area Determination. (1) Based on the definitions in Section 1 of this administrative regulation, the KLEC shall determine whether a law enforcement or telecommunications course should be categorized as a:

(a) Conceptual skills course;

(b) Human skills course; or

(c) Technical skills course.

(2) If a new course is approved or recognized by the KLEC, pursuant to 503 KAR 1:090 and 503 KAR 1:120, the council shall categorize the course in accordance with subsection (1) of this section.

(3) A law enforcement or telecommunications course may be categorized in up to two (2) different categories.

Section 3. Application for Career Development Program. A peace officer or telecommunicator who wishes to apply for a particular career step certificate shall:

(1) Complete a "CDP-1 Participant Commitment Form", which shall include the following:

(a) Applicant's name and agency;

(b) Social Security number and date of birth;

(c) The program to which the applicant wishes to commit;

(d) Signature of the applicant; and

(e) Signature of the applicant's agency head.

(2) Submit one (1) of the following application forms for the specific career development step for which the participant wishes to apply:

(a) Intermediate Law Enforcement Officer;

(b) Advanced Law Enforcement Officer;

(c) Law enforcement Officer Investigator;

(d) Law Enforcement Traffic Officer;

(e) Advanced Deputy Sheriff;

(f) Law Enforcement Supervisor;

(g) Law Enforcement Manager;

(h) Law Enforcement Executive;

(i) Basic Telecommunicator;

(j) Intermediate Telecommunicator;

(k) Advanced Telecommunicator;

(l) Telecommunications Manager/Director;

(m) Law Enforcement Training Officer;

(n) Law Enforcement Chief Executive;

(o) Law Enforcement Officer Advanced Investigator;

(p) Crime Scene Processing Officer;[~~oe~~]

(q) Telecommunications Supervisor;

(r) Communications Training Officer.

(3) Include the following information on the application form:

(a) Applicant's name and agency;

(b) Social Security number and date of birth;

(c) Date of employment with current agency;

(d) Current rank or title and date of promotion to that position;

(e) Employment history;

(f) Training history;

(g) Educational history;

(h) Signature of program applicant; and

(g) College and training credit hours applied to the requirements of the particular program to which the applicant wishes to apply; and

(4) Submit an official copy of a transcript or other documentation showing that the applicant has successfully completed required:

(a) KLEC-approved or recognized courses; and

(b) College courses.

Section 4. In-service Training, College, Out-of-state Work Experience, Retroactive Credit. (1) The KLEC shall approve in-service training before it is applied toward a career development step.

(2) A program participant shall not receive more than one (1) program credit for an in-service training course.

(3) Retroactivity. Participants in the Career Development Program may be granted credit for college courses and KLEC-approved training received prior to the implementation of the program.

(4) Fifteen (15) hours of KLEC-approved classroom training may be substituted for one (1) hour of college credit by program participants.

(5) A program participant may apply out-of-state work experience toward the requirements of a career development step. To receive credit, the participant shall submit a written request describing the past experience and any supporting documentation to the KLEC for approval.

Section 5. Intermediate Law Enforcement Officer Certificate. To demonstrate proficiency in the Intermediate Law Enforcement Officer Career Step, a peace officer shall:

(1) Have active peace officer certification in accordance with KRS 15.386(2);

(2) Earn 160 additional hours of KLEC-approved or recognized in-service training, of which:

(a) Sixty (60) percent (ninety-six (96) hours) shall be in technical skills development; and

(b) Forty (40) percent (sixty-four (64) hours) shall be in human skills development; and

(3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

(a) Two (2) years of experience and a bachelor's degree;

(b) Four (4) years of experience and an associate's degree;

(c) Four (4) years of experience and ninety-five (95) hours of college credit;

(d) Five (5) years of experience and eighty (80) hours of college credit;

(e) Six (6) years of experience and sixty-five (65) hours of college credit;

(f) Seven (7) years of experience and fifty (50) hours of college credit; or

(g) Eight (8) years of experience and thirty-five (35) hours of college credit.

Section 6. Advanced Law Enforcement Officer Certificate. To demonstrate proficiency in the Advanced Law Enforcement Officer Career Step, a peace officer shall:

(1) Complete the Intermediate Law Enforcement Career Step;

(2) Earn 160 additional hours of KLEC-approved or recognized in-service training, of which:

(a) Forty (40) percent (sixty-four (64) hours) shall be in technical skills development;

(b) Forty (40) percent (sixty-four (64) hours) shall be in human skills development; and

(c) Twenty (20) percent (32 hours) shall be in conceptual skills development; and

(3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or

university, recognized by the Kentucky Council on Postsecondary Education:

- (a) Four (4) years of experience and a master's degree;
- (b) Six (6) years of experience and a bachelor's degree;
- (c) Nine (9) years of experience and an associate's degree;
- (d) Eight (8) years of experience and 110 hours of college credit;
- (e) Nine (9) years of experience and ninety-five (95) hours of college credit;
- (f) Ten (10) years of experience and eighty (80) hours of college credit;
- (g) Eleven (11) years of experience and sixty-five (65) hours of college credit; or
- (h) Twelve (12) years of experience and fifty (50) hours of college credit.

Section 7. Law Enforcement Supervisor Certificate. To demonstrate proficiency in the Law Enforcement Supervisor Career Step, a peace officer shall:

- (1) Have active peace officer certification in accordance with KRS 15.386(2);
- (2) Earn a minimum of 160 additional hours of KLEC-approved or recognized in-service training as follows:
 - (a) Forty (40) hours of technical skills development courses;
 - (b) Forty (40) hours of conceptual skills development courses; and
 - (c) Eighty (80) hours in one (1) of the following options of courses:
 - 1. Academy of Police Supervision;
 - 2. The forty (40) hour basic supervisor's course and forty (40) hour advanced supervisor's course; or
 - 3. A KLEC-approved or recognized equivalent course; and
- (3) Have one (1) of the following combinations of full-time supervisory law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
 - (a) Two (2) years of experience and a master's degree;
 - (b) Four (4) years of experience and a bachelor's degree;
 - (c) Six (6) years of experience and an associate's degree;
 - (d) Six (6) years of experience and ninety-five (95) hours of college credit;
 - (e) Seven (7) years of experience and eighty (80) hours of college credit;
 - (f) Eight (8) years of experience and sixty-five (65) hours of college credit; or
 - (g) Nine (9) years of experience and fifty (50) hours of college credit.

Section 8. Law Enforcement Manager Certificate. To demonstrate proficiency in the Law Enforcement Manager Career Step, a peace officer shall:

- (1) Have active peace officer certification in accordance with KRS 15.386(2);
- (2) Complete the:
 - (a) Department of Criminal Justice Training Criminal Justice Executive Development Course;
 - (b) Department of Criminal Justice Training School for Strategic Leadership;
 - (c) Federal Bureau of Investigation (FBI) National Academy;
 - (d) University of Louisville Southern Police Institute Administrative Officers Course;
 - (e) Northwestern University School of Police Staff and Command;
 - (f) Police Executive Leadership College; or
 - (g) Another executive leadership course recognized and approved by the KLEC as equal to one (1) of the above courses; and
- (3) Have one (1) of the following combinations of full-time law enforcement management experience and credits from an accredited College or University, recognized by the Kentucky Council on Postsecondary Education:
 - (a) Two (2) years of experience and a master's degree;
 - (b) Four (4) years of experience and a bachelor's degree;
 - (c) Six (6) years of experience and an associate's degree;
 - (d) Six (6) years of experience and ninety-five (95) hours of

college credit;

- (e) Seven (7) years of experience and eighty (80) hours of college credit;
- (f) Eight (8) years of experience and sixty-five (65) hours of college credit; or
- (g) Nine (9) years of experience and fifty (50) hours of college credit.

Section 9. Law Enforcement Executive Certificate. (1) To demonstrate proficiency in the Law Enforcement Executive Career Step, a peace officer shall:

- (a) Have active peace officer certification in accordance with KRS 15.386(2);
 - (b) Successfully complete:
 - 1. Orientation for new chiefs, offered by the Department of Criminal Justice Training;
 - 2. Mandatory duties of the sheriff, offered by the Department of Criminal Justice Training;
 - 3. Department of Criminal Justice Training School for Strategic Leadership;
 - 4. Three (3) police executive command courses, offered by the Department of Criminal Justice Training;
 - 5. Three (3) Current Leadership Issues for Mid-level Executives (CLIMES) courses; or
 - 6. An executive level course as offered by the:
 - a. Federal Bureau of Investigation (FBI);
 - b. University of Louisville Southern Police Institute;
 - c. Northwestern University School of Police Staff and Command;
 - d. Institute of Police Technology and Management; or
 - e. Institute for Law Enforcement Administration;
 - (c) Successfully complete one (1) of the following:
 - 1. 120 hours of training in conceptual or human skills development; or
 - 2. Law Enforcement Management Career Step, plus forty (40) hours training in conceptual or human skills development; and
 - (d) Have one (1) of the following combinations of full-time executive law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
 - 1. Two (2) years of experience and a bachelor's degree;
 - 2. Three (3) years of experience and sixty (60) hours of college credit; or
 - 3. Four (4) years of experience and thirty (30) hours of college credit.
- (2) Points earned from in-service training courses shall not be used to substitute for college credit in the Law Enforcement Executive Career Step.

Section 10. Law Enforcement Chief Executive Certificate. (1) To demonstrate proficiency in the Law Enforcement Chief Executive Career Step, a peace officer shall:

- (a) Successfully complete:
 - 1. Orientation for new chiefs, offered by the Department of Criminal Justice Training;
 - 2. Mandatory duties of the sheriff, offered by the Department of Criminal Justice Training;
 - 3. Department of Criminal Justice Training School for Strategic Leadership;
 - 4. Three (3) police executive command courses, offered by the Department of Criminal Justice Training;
 - 5. Three (3) Current Leadership Issues for Mid-level Executives (CLIMES) courses; or
 - 6. An executive level course as offered by the:
 - a. Federal Bureau of Investigation (FBI);
 - b. University of Louisville Southern Police Institute;
 - c. Northwestern University School of Police Staff and Command;
 - d. Institute of Police Technology and Management; or
 - e. Institute for Law Enforcement Administration;
- (b) Successfully complete one (1) of the following:
 - 1. 120 hours of training in conceptual or human skills development; or
 - 2. Law Enforcement Management Career Step, plus forty (40)

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hours training in conceptual or human skills development; and

(c) Have one (1) of the following combinations of full-time executive law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

1. Two (2) years of experience and a bachelor's degree;
2. Three (3) years of experience and sixty (60) hours of college credit; or
3. Four (4) years of experience and thirty (30) hours of college credit.

(2) Points earned from in-service training courses shall not be used to substitute for college credit in the Law Enforcement Executive Career Step.

Section 11. Law Enforcement Officer Investigator Certificate. To demonstrate proficiency in the Law Enforcement Investigator Career Step, a peace officer shall:

(1) Have active peace officer certification in accordance with KRS 15.386(2);

(2) Complete 200 hours of KLEC-approved or recognized in-service training, consisting of:

(a) Eighty (80) hour Criminal Investigations I course or KLEC-approved or recognized equivalent; and

(b) 120 training hours in investigative courses identified by the KLEC; and

(3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

- (a) Four (4) years of experience and a master's degree;
- (b) Six (6) years of experience and a bachelor's degree;
- (c) Nine (9) years of experience and an associate's degree;
- (d) Eight (8) years of experience and 110 hours of college credit;

(e) Nine (9) years of experience and ninety-five (95) hours of college credit;

(f) Ten (10) years of experience and eighty (80) hours of college credit;

(g) Eleven (11) years of experience and sixty-five (65) hours of college credit; or

(h) Twelve (12) years of experience and fifty (50) hours of college credit.

Section 12. Law Enforcement Traffic Officer Certificate. To demonstrate proficiency in the Law Enforcement Traffic Career Step, a peace officer shall:

(1) Have active peace officer certification in accordance with KRS 15.386(2);

(2) Complete 200 hours of in-service training, consisting of:

(a) Eighty (80) hour basic accident investigation course or a KLEC-approved equivalent; and

(b) 120 training hours in traffic courses identified by the KLEC; and

(3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

- (a) Four (4) years of experience and a master's degree;
- (b) Six (6) years of experience and a bachelor's degree;
- (c) Nine (9) years of experience and an associate's degree;
- (d) Eight (8) years of experience and 110 hours of college credit;

(e) Nine (9) years of experience and ninety-five (95) hours of college credit;

(f) Ten (10) years of experience and eighty (80) hours of college credit;

(g) Eleven (11) years of experience and sixty-five (65) hours of college credit; or

(h) Twelve (12) years of experience and fifty (50) hours of college credit.

Section 13. Advanced Deputy Sheriff Certificate. To demonstrate proficiency in the Advanced Deputy Sheriff Career Step, a peace officer shall:

(1) Have active peace officer certification in accordance with KRS 15.386(2);

(2) Earn 160 additional hours of KLEC-approved or recognized in-service training, of which:

(a) Eighty (80) hours shall be in topics specific to sheriffs' responsibilities;

(b) Forty (40) hours shall be in technical skills development; and

(c) Forty (40) hours shall be in human skills development; and

(3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

(a) Two (2) years of experience and a bachelor's degree;

(b) Four (4) years of experience and an associate's degree;

(c) Four (4) years of experience and ninety-five (95) hours of college credit;

(d) Five (5) years of experience and eighty (80) hours of college credit;

(e) Six (6) years of experience and sixty-five (65) hours of college credit;

(f) Seven (7) years of experience and fifty (50) hours of college credit; or

(g) Eight (8) years of experience and thirty-five (35) hours of college credit.

Section 14. Basic Telecommunicator Certificate. To demonstrate proficiency in the Basic Telecommunications Career Step, a person shall:

(1) Have active certification as a:

(a) CJIS telecommunicator in accordance with KRS 15.565; or

(b) Non-CJIS telecommunicator in accordance with KRS 15.560; and

(2) Successfully complete the following courses:

(a)[(4)] Twenty-four (24) hours of emergency medical dispatch;

(b)[(2)] Forty (40) hours of basic telecommunications;

(c)[(3)] Eight (8) hours of Crisis Negotiation;

(d)[(4)] Eight (8) hours of family violence;

(e)[(5)] Spanish for the Telecommunicator; and

(f)[(6)] Incident command.

Section 15. Communications Training Officer Certificate. To demonstrate proficiency in the Communications Training Officer Career Step, a person shall:

(1) Have active certification as a:

(a) CJIS telecommunicator in accordance with KRS 15.565; or

(b) Non-CJIS telecommunicator in accordance with KRS 15.560;

(2) Complete the Basic Telecommunications Career Step;

(3) Complete the following courses:

(a) Forty (40) hour Communications Training Officer course;

(b) Eight (8) hour Communications Training Officer professional development course;

(c) Twenty-four (24) hours of elective courses from any telecommunications course approved by the KLEC, which shall include the sixteen (16) hour Communications Training Officer program if the course in paragraph (a) of this subsection is completed after January 1, 2011; and

(d) An eight (8) hours KLEC-approved telecommunications ethics course, unless previously completed for Intermediate Telecommunicator certificate; and

(4) Have one (1) of the following combinations of full-time telecommunications experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

(a) Four (4) years of experience and forty-five (45) hours of college credit;

(b) Five (5) years of experience and forty (40) hours of college credit;

(c) Six (6) years of experience and thirty-five (35) hours of college credit;

(d) Seven (7) years of experience and thirty (30) hours of college credit;

(e) Eight (8) years of experience and twenty-five (25) hours of

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college credit; or

(f) Nine (9) years of experience and twenty (20) hours of college credit.

Section 16. Intermediate Telecommunicator Certificate. To demonstrate proficiency in the Intermediate Telecommunications Career Step, a person shall:

(1) Have active certification as a:

(a) CJIS telecommunicator in accordance with KRS 15.565; or
(b) Non-CJIS telecommunicator in accordance with KRS

15.560; (2) Complete the Basic Telecommunications Career Step;

(3)~~[(2)]~~ Complete the following courses:

(a) Eight (8) hours of customer service;

(b) Eight (8) hours of teambuilding;

(c) An eight (8) hours KLEC-approved telecommunications ethics course;

(d) Sixteen (16) hours of cultural awareness;

(e) Sixteen (16) hours of elective courses from any telecommunications course approved by the KLEC; and

~~(4)~~[(d)]~~ Sixteen (16) hours of advanced emergency medical dispatch; and~~

~~(3)]~~ Have one (1) of the following combinations of full-time telecommunications experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

(a) Three (3) years of experience and thirty (30) hours of college credit;

(b) Four (4) years of experience and twenty-five (25) hours of college credit;

(c) Five (5) years of experience and twenty (20) hours of college credit;

(d) Six (6) years of experience and fifteen (15) hours of college credit;

(e) Seven (7) years of experience and ten (10) hours of college credit; or

(f) Eight (8) hours of experience and five (5) hours of college credit.

Section 17.~~[(16-)]~~ Advanced Telecommunicator Certificate. To demonstrate proficiency in the Advanced Telecommunications Career Step, a person shall:

(1) Have active certification as a:

(a) CJIS telecommunicator in accordance with KRS 15.565; or
(b) Non-CJIS telecommunicator in accordance with KRS

15.560; (2) Complete the Intermediate Telecommunications Career Step;

(3)~~[(2)]~~ Complete the following courses:

(a) Sixteen (16) hour Emergency Medical Dispatch (EMD) Advanced course;

(b) Twenty-four (24) hour Fire/HAZMAT Incident course; and

(c) Sixteen (16) hour tactical dispatch course;

~~(4)~~[(4)]~~ Forty (40) hours of communications training officer; and~~

~~(b) An eight (8) hours KLEC-approved telecommunications ethics course;~~

~~(3)]~~ Complete twenty-four (24)~~eight (8)]~~ hours of elective courses from any telecommunications course approved by the KLEC; and

~~(5)~~[(4)]~~~~ Have one (1) of the following combinations of full-time telecommunications experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

(a) Four (4) years of experience and forty-five (45) hours of college credit;

(c) Five (5) years of experience and forty (40) hours of college credit;

(d) Six (6) years of experience and thirty-five (35) hours of college credit;

(e) Seven (7) years of experience and thirty (30) hours of college credit;

(f) Eight (8) years of experience and twenty-five (25) hours of college credit; or

(g) Nine (9) years of experience and twenty (20) hours of col-

lege credit.

Section 18.~~[(17-)]~~ Telecommunications Supervisor Certificate. To demonstrate proficiency in the Telecommunications Supervisor Career Step, a person shall:

(1) Have active certification as a:

(a) CJIS telecommunicator in accordance with KRS 15.565; or
(b) Non-CJIS telecommunicator in accordance with KRS

15.560;

(2) Complete the Basic Telecommunications Career Step;

~~(3)~~[(2)]~~~~ Successfully complete:

(a) The forty (40) hour Telecommunications Executive Development~~Supervisor Basic~~ course;~~[and]~~

(b) Sixteen (16) hours of supervision training approved by the KLEC;

(c) An eight (8) hours KLEC-approved telecommunications ethics course, if the telecommunicator has not previously completed the Intermediate telecommunicator certificate; and

(d) Thirty-two (32) hours of elective course in supervision training approved by the KLEC; and

~~(4)~~[(3)]~~~~ Have one (1) of the following combinations of full-time telecommunications experience in a supervisory position and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

(a) Two (2) years of experience and an associate's degree;

(b) Three (3) years of experience and fifty-five hours of college credit;

(c) Four (4) years of experience and fifty (50) hours of college credit;

(d) Five (5) years of experience and forty-five (45) hours of college credit;

(e) Six (6) years of experience and forty (40) hours of college credit;

(f) Seven (7) years of experience and thirty-five (35) hours of college credit; or

(g) Eight (8) years of experience and thirty (30) hours of college credit.

Section 19.~~[(18-)]~~ Telecommunications Manag-
er/Director~~Director/Manager~~ Certificate. To demonstrate proficiency in the Telecommunications Manag-
er/Director~~Director/Manager~~ Career Step, a person shall:

(1) Have active certification as a:

(a) CJIS telecommunicator in accordance with KRS 15.565; or
(b) Non-CJIS telecommunicator in accordance with KRS

15.560;

(2) Obtain the Telecommunications Supervisor Certificate;

~~(3)~~[(2)]~~~~ Successfully complete:

(a) The forty (40) hour Telecommunications Executive Development course II; [and]

(b) The forty (40) hour telecommunications executive development III course; and

(c) Forty (40) hours of elective supervisory or management courses approved by the KLEC; and

~~(4)~~[(3)]~~~~ Have one (1) of the following combinations of full-time telecommunications experience in a management position and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

(a) Two (2) years of experience and a bachelors degree;

(b) Four (4) years of experience and an associate's degree;

(c) Five (5) years of experience and sixty (60) hours of college credit;

(d) Six (6) years of experience and fifty-five (55) hours of college credit;

(e) Seven (7) years of experience and fifty (50) hours of college credit;

(f) Eight (8) years of experience and forty-five (45) hours of college credit;

(g) Nine (9) years of experience and forty (40) hours of college credit; or

(h) Ten (10) years of experience and thirty-five (35) hours of college credit.

Section 20.~~[(19-)]~~ Law Enforcement Training Officer. To demon-

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strate proficiency in the Law Enforcement Training Career Step, a peace officer shall have:

(1) Active peace officer certification in accordance with KRS 15.386(2);

(2) Have successfully completed the following:

- (a) Intermediate Law Enforcement Officer Certificate;
- (b) Advanced Law Enforcement Officer Certificate; and
- (c) 120 hours of in-service training, which shall include:

- 1. Police Training Officer course;
- 2. Field Instructor course; and

3. Crisis Intervention Training or Law Enforcement Response to Special Needs Population; and

(3) One (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

(a) Four (4) years of experience and a master's degree;

(b) Six (6) years of experience and a bachelor's degree;

(c) Nine (9) years of experience and an associate's degree;

(d) Eight (8) years of experience and 110 hours of college credit;

(e) Nine (9) years of experience and ninety-five (95) hours of college credit;

(f) Ten (10) years of experience and eighty (80) hours of college credit;

(g) Eleven (11) years of experience and sixty-five (65) hours of college credit; or

(h) Twelve (12) years of experience and fifty (50) hours of college credit.

Section 21.~~[20-]~~ Law Enforcement Officer Advanced Investigator. To demonstrate proficiency in the Law Enforcement Officer Advanced Investigator Career Step, a peace officer shall have:

(1) Active peace officer certification in accordance with KRS 15.386(2);

(2) Successfully completed the following:

(a) Law Enforcement Officer Investigator Certificate; and

(b) 160 hours of electives in investigations courses approved or recognized by the Kentucky Law Enforcement Council; and

(3) One (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

(a) Four (4) years of experience and a master's degree;

(b) Six (6) years of experience and a bachelor's degree;

(c) Nine (9) years of experience and an associate's degree;

(d) Eight (8) years of experience and 110 hours of college credit;

(e) Nine (9) years of experience and ninety-five (95) hours of college credit;

(f) Ten (10) years of experience and eighty (80) hours of college credit;

(g) Eleven (11) years of experience and sixty-five (65) hours of college credit; or

(h) Twelve (12) years of experience and fifty (50) hours of college credit.

Section 22.~~[24-]~~ Crime Scene Processing Officer. To demonstrate proficiency in the Crime Scene Processing Officer career step, a peace officer shall have:

(1) Active peace officer certification in accordance with KRS 15.386(2);

(2) Successfully completed:

(a) 200 hours of in-service training, which shall include:

- 1. Crime Scene Investigations;
- 2. Digital Photography; and
- 3. Advanced Latent Fingerprints; and

(b) One (1) of the following:

1. Eighty (80) hours of electives in Investigations courses offered by the Department of Criminal Justice Training; or

2. The Kentucky Criminalistics Academy or the National Forensic Academy; and

(3) One (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or

university, recognized by the Kentucky Council on Postsecondary Education:

(a) Four (4) years of experience and a master's degree;

(b) Six (6) years of experience and a bachelor's degree;

(c) Nine (9) years of experience and an associate's degree;

(d) Eight (8) years of experience and 110 hours of college credit;

(e) Nine (9) years of experience and ninety-five (95) hours of college credit;

(f) Ten (10) years of experience and eighty (80) hours of college credit;

(g) Eleven (11) years of experience and sixty-five (65) hours of college credit; or

(h) Twelve (12) years of experience and fifty (50) hours of college credit.

Section 23.~~[22-]~~ Certificate of Completion. The KLEC shall issue a certificate and uniform lapel pin to a peace officer or telecommunicator upon completion of a career development step.

Section 24.~~[23-]~~ Maintenance of Records. All training records shall be maintained in accordance with applicable provisions of KRS Chapter 171.

Section 25.~~[24-]~~ Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Career Development Program Participant Commitment Form," KLEC Form CDP-1, (June 2010 edition)~~[(November 2008 edition)]~~;

(b) "Intermediate Law Enforcement Officer", KLEC Form CDP-2, (November 2008 edition)~~[(August 2006 edition)]~~;

(c) "Advanced Law Enforcement Officer", KLEC Form CDP-3, (November 2008 edition);

(d) "Law Enforcement Officer Investigator", KLEC Form CDP-4, (November 2008 edition);

(e) "Law Enforcement Traffic Officer", KLEC Form CDP-5, (November 2008 edition);

(f) "Advanced Deputy Sheriff", KLEC Form CDP-6, (November 2008 edition);

(g) "Law Enforcement Supervisor", KLEC Form CDP-7, (November 2008 edition);

(h) "Law Enforcement Manager", KLEC Form CDP-8, (November 2008 edition);

(i) "Law Enforcement Executive", KLEC Form CDP-9, (November 2008 edition);

(j) "Basic Telecommunicator", KLEC Form CDP-10, (November 2008 edition);

(k) "Intermediate Telecommunicator", KLEC Form CDP-11, (July 2010 edition)~~[(November 2008 edition)]~~;

(l) "Advanced Telecommunicator", KLEC Form CDP-12, (June 2010 edition)~~[(November 2008 edition)]~~;

(m) "Telecommunications Supervisor", KLEC Form CDP-13, (June 2010 edition)~~[(November 2008 edition)]~~;

(n) "Telecommunications Director/Manager", KLEC Form CDP-14, (June 2010 edition)~~[(November 2008 edition)]~~; and

(o) "Law Enforcement Chief Executive", KLEC Form CDP-15, (November 2008 edition);

(p) "Law Enforcement Training Officer", KLEC Form CDP-16, (November 2008 edition);

(q) "Law Enforcement Officer Advanced Investigator", KLEC Form CDP-17, (November 2008 edition)~~and~~;

(r) "Crime Scene Processing Officer", KLEC Form CDP-18, (November 2008 edition); and

(s) "Communications Training Officer", KLEC Form CDP-19, (June 2010 edition).

(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: August 6, 2010

FILED WITH LRC: August 6, 2010 at 2 p.m.

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PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2010 at 9:00 a.m. in Room 211, Funderburk Building, Kit Carson Drive, Richmond, Kentucky 40475. Individuals interested in being heard at this hearing shall notify this agency in writing by September 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 September 30, 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: Stephen D. Lynn, Assistant General Counsel, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102, phone (859) 622-3073, fax (859) 622-5027.

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 Kentucky Law Enforcement Council Career Development Program. The necessity of this administrative regulation: KRS 15.330(1)(d) authorizes the establishment of voluntary career development programs for peace officers and telecommunications. The administrative regulation is necessary to set out the requirements of participating in and completing the program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with the requirements of KRS 15.330(1)(d), which authorizes the establishment of voluntary career development programs by the Kentucky Law Enforcement Council.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 15.330(1)(d) authorizes the establishment of voluntary career development programs for peace officers and telecommunications. The administrative regulation establishes the requirements of the career development program in compliance with KRS 15.330(1)(d).

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

(a) How the amendment will change this existing administrative regulation: This amendment creates additional certificates that may be earned and adds additional courses that may be applied toward participation in the career development program. Further, various forms have been updated.

(b) The necessity of the amendment to this administrative regulation: To add additional certificates and courses for eligibility.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 15.330(1)(d) authorizes the establishment of voluntary career development programs for peace officers and telecommunications by the Kentucky Law Enforcement Council.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will expand the available certificates and list of courses that may be applied for credit toward the career development program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Although this program is voluntary and not all will participate, this administrative regulation could benefit all law enforcement and telecommunications personnel in the Commonwealth, which is approximately 8,000 in number.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative

regulation or amendment: They will have one new certificate which can be earned, as well as additional courses for which they can be given credit in the CDP program.

(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 amendment should not cost anything. Participation is voluntary and free of charge.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will have one additional specialty for which they can be given credit and additional courses for which they can be granted credit.

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

(a) Initially: There should not be any new costs above that currently incurred to administer the Career Development Program, which was originally implemented in 2003 and cost approximately \$2,000.

(b) On a continuing basis: Approximately \$1,000 per year.

(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 is necessary. 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? For those who choose to participate, this administrative regulation will affect city and county police departments, sheriffs' offices, and telecommunications. This administrative regulation is intended to provide a means by which local law enforcement officers and telecommunications can work toward a "career track" in their specialized field of law enforcement.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15.330(1)(d)

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

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

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

(c) How much will it cost to administer this program for the first year? The program was originally implemented in 2003 and cost approximately \$2,000.

(d) How much will it cost to administer this program for subsequent years? Approximately \$1,000.

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

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
(Amendment)

601 KAR 1:018. Special overweight or overdimensional permits.

RELATES TO: KRS 175.450, 177.390-177.570, 177.9771, 186.010(8), 186.050(8)(9), 189.221, 189.222, 189.2225(3), 189.270, 189.2715, 189.2717, 281.752, 23 C.F.R. 658.17, 49 C.F.R. 367, 393.11

STATUTORY AUTHORITY: KRS 189.270(6), 189.271(9)(b), 189.2715(1), 189.2717(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189.270(6)[(4) to (5)], 189.271(9)(b), 189.2715(1), and 189.2717(1) authorize the Secretary of the Kentucky Transportation Cabinet to issue permits for the movement of motor vehicles with divisible or nondivisible loads exceeding legal weights or dimensions. This administrative regulation establishes the procedures and requirements for the issuance of an overweight or overdimensional permit. It exempts certain farm implement movements from the requirements of obtaining an overdimensional permit, but retains the associated safety requirements.

Section 1. Definitions. (1) "Boat" means a vehicle used for movement on the water and the trailer on which it is placed for transporting the vehicle on the highway.

(2) "Divisible load" means a load ~~that if [which when]~~ reasonably divided, dismantled, disassembled or rearranged would no longer be overweight or overdimensional.

(3) "Dual-wheel axle" means one (1) axle with two (2) wheels on each side of the axle.

(4) "Farm implement or equipment" means machinery, equipment or vehicle used exclusively in a farm or agriculture operation including those farm implements in KRS 186.010(8)(a) that [items which] are not required by ~~KRS Chapter 186~~ to be registered.

(5) "Fully-controlled access highway" means a highway ~~that [which]~~:

- (a) Gives preference to through traffic;
- (b) Has access only at selected public roads or streets; and
- (c) Has no highway grade crossing or intersection.

(6) "Height pole" means a vertical clearance measuring device. ~~"National holiday" means:~~

- ~~(a) New Year's Day;~~
- ~~(b) Memorial Day (as observed on the last Monday in May);~~
- ~~(c) Independence Day;~~
- ~~(d) Labor Day;~~
- ~~(e) Thanksgiving Day; and~~
- ~~(f) Christmas Day.~~

(7) "Nondivisible load" or vehicle means a load or vehicle exceeding applicable length, height, or weight limits that [which] if separated into smaller loads or vehicles would:

- (a) Compromise the intended use of the vehicle, making it unable to perform the function for which it was intended;
- (b) Destroy the value of the load or vehicle, making it unusable for its intended purpose; or
- (c) Require more than eight (8) work hours to dismantle using appropriate equipment.

(8) "Overdimensional" means the motor vehicle exceeds the dimension limits set forth in 603 KAR 5:070.

(9) "Overweight" means the motor vehicle exceeds:

- (a) The gross weight limit established in 603 KAR 5:066;
- (b) The axle weight limit established in 603 KAR 5:066;
- (c) The gross weight limits established by KRS 177.9771 for a motor vehicle transporting coal or coal by-products;
- (d) The bridge weight limit established by 603 KAR 5:066; or
- (e) The gross weight limit posted at a bridge or other structure.

(10) ~~"Permit fee" means the fee set forth in KRS 189.270,~~

~~189.2715, or 189.2717 for the issuance of an overweight or overdimensional trip or annual permit, to cover the cost of processing the permit application, including:~~

- ~~(a) A qualification check of the applicant;~~
- ~~(b) A statutory compliance check; and~~
- ~~(c) An initial bridge and weight analysis.~~

~~(14)] "Pole trailer" means a motor vehicle without motive power that is [a vehicle which is]:~~

~~(a) Designed to be drawn by a motor vehicle and attached to the towing motor vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing motor vehicle; and~~

~~(b) Used for transporting long or irregularly shaped loads such as poles, pipes, or structural members that [which] generally are capable of sustaining themselves as beams between the supporting connections.~~

~~(11) "Sealed containerized ocean-going cargo unit" means a nondivisible unit of cargo that is part of international trade due to importation from, or exportation to another country.~~

~~(12) "Single-wheel axle" means one load bearing axle [a steering axle] with one (1) wheel on each side of the axle.~~

~~(13) "Steering Axle" means the axle or axles of a vehicle or combination of vehicles by which the vehicle or vehicles are guided or steered.~~

~~(14) "Toll road" means any project constructed under the provisions of KRS Chapter 175.450 [475] or KRS 177.390 through 177.570 on which a toll is collected or was in the past collected by the Transportation Cabinet.~~

~~(15) "Trunnion axle" means an axle configuration with two (2) individual axles mounted in the same transverse plane with four (4) tires on each axle connected at a pivot point that allows each individual axle to oscillate in a vertical plane to provide constant and equal weight distribution on each individual axle.~~

~~(16) [(44)] "Utility equipment" means the specialized equipment, including earth-moving equipment, necessary for the installation or operation of utility poles or pipes, [or] transformers, regulators, or other utility electrical field equipment. It shall not include any equipment necessary for the construction or operation of a power generation station.~~

Section 2. Permit Application. (1) An applicant for an overweight or overdimensional annual or single trip permit shall submit to the Division of Motor Carriers a completed ~~["]Application for Annual Overweight or [A] Overdimensional Permit, TC Form 95-25 or a completed Kentucky Overweight or Overdimensional Permit Worksheet, TC Form 95-10 for a single trip permit. A["]. The~~ permit application shall contain the following:

- (a) A detailed description of the equipment or load to be moved;
- (b) A description and vehicle identification number of the power unit moving the equipment;
- (c) Registration weight and license plate number of the power unit;
- (d) ~~The carrier's [Equipment operator's]~~ name, telephone number and address;
- (e) Routes requested for travel; and
- (f) The period of time requested for travel:

- 1. A single trip shall be ten (10) days or less; or
- 2. An annual permit shall be 365 days from date of issue.

(2) A single trip permit application or request shall specify the following:

- (a) The year and make of the towing vehicle;
- (b) The towing vehicle's license plate number;
- (c) The maximum weight for which the vehicle is registered;
- (d) The state of registration of the vehicle;
- (e) The name and address of the owner;
- (f) The dates of travel;
- (g) The serial number for a [of the] manufactured home; ~~and~~
- (h) The specific routes of travel requested; and
- (i) A description of the cargo.

(3) If the towing vehicle for which a single trip permit is being requested is registered in a state other than Kentucky, the vehicle shall be either:

- (a) Apportioned registered to operate in Kentucky; or
- (b) In compliance with KRS 281.752.

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(4) An annual permit application or request shall specify the following information relating to the motor vehicle:

- (a) Year and make;
- (b) Vehicle identification number;
- (c) License plate number and unit number;
- (d) The maximum weight for which it is registered;
- (e) The state of apportioned registration, if not registered in Kentucky;

(f) Name and address of the motor carrier operating or the owner of the towing vehicle;~~and~~

(g) Whether the motor carrier operating the towing vehicle is a for-hire or private carrier;

(h) A general description of cargo; and

(i) Axle spacing.

(6) If the towing vehicle issued an annual permit is registered in a state other than Kentucky, the vehicle shall be apportioned registered to operate in Kentucky and be subject to the fees established in 49 C.F.R. Part 367.

(7) The application for an annual permit shall contain a certification by the applicant that he or she shall comply with Kentucky laws and regulations related to~~is aware of the safety requirements in~~ the movement of overweight or~~and~~ [overdimensional loads] and shall at all times comply with them.

(8) Special annual or trip permits to allow the movement of motor vehicles with gross weights or gross dimensions in excess of the weights and dimensions specified by statute and administrative regulation shall be issued by the ~~Department of Vehicle Regulation.~~ Division of Motor Carriers if the~~when, in the discretion of the department, this~~ movement is necessary to provide transportation for specified cargo in the interest of the health, welfare and economy of the people.

(9) Each trip or annual permit issued shall be limited to designated portions of the state primary road system and stated periods of time.

(10) A separate permit shall be required for each vehicle involved in a movement.

(11) A permit shall not be issued for a divisible load that~~if~~ which~~when~~ reasonably divided, dismantled, disassembled or rearranged would no longer be overweight or overdimensional except as provided by KRS 189.2715 or 189.2717.

(12) An overweight permit shall not be issued to the following:

(a) A Kentucky licensed vehicle with~~for~~ a gross weight exceeding that for which the truck is registered~~;~~ unless registered for 80,000 pounds (36,287.36 kilograms);

(b) A tractor-trailer combination of less than five (5) axles;

(c) A vehicle not registered in Kentucky, unless it has met one (1) of the following conditions:

1. The vehicle has been apportioned registered by another jurisdiction to operate in Kentucky at 80,000 pounds (36,287.36 kilograms); or

2. The vehicle has met the provisions of KRS 281.752;

(d) A vehicle whose axle weight would exceed the product of 700 pounds (317.51 kilograms) times the aggregate width in inches established from the manufacturer's stamped tire measurement for all tires on the axle; or

(e) A towing vehicle whose horsepower or braking capacity is not adequate to safely transport the overdimensional or overweight load.

(13) The cabinet shall further restrict the movement or deny the permit for a~~This administrative regulation shall not prohibit the permit issuing office from further restricting movements or denying a permit for any~~ movement that~~which~~ may cause damage to property or that~~which~~ may be detrimental to public safety and convenience.

(14) An annual permit shall not be issued if the vehicle is licensed with a limited or restricted registration as identified in KRS 186.050(8) and (9) for Kentucky-based vehicles.

Section 3. Height. (1) A vehicle and load with a height in excess of thirteen (13) feet, six (6) inches shall obtain a single-trip overdimensional permit~~;~~ pursuant to KRS 189.270(2)~~;~~ prior to movement.

(2) The maximum height for each single-trip overdimensional permit shall be determined by the cabinet~~;~~ based upon underpass

and bridge height along the designated route.

Section 4. Weight. (1) Gross or axle overweight shall not be permitted:

(a) On a combination units of less than five (5) axles; or

(b) On a single unit except off-road equipment such as road graders~~scrapers~~, mobile cranes, or other self-propelled units.

(c) A self propelled off-road vehicle shall follow the axle weight limitation listed in subsection (3) of this section.

(2) A vehicle shall not issued an overweight permit that does not have a declared gross weight of at least 80,000 lbs~~Kentucky licensed vehicles shall not be permitted for weights exceeding that for which licensed unless licensed for the maximum of 80,000 pounds~~.

(3) The weight on any single axle in any combination shall not exceed the product of 700 pounds times the aggregate width in inches established by the manufacturer's stamped tire measurement of all the tires on the axle, or the following axle or axle group weights, whichever is less:

(a) Single wheel axle - 24,000 pounds;

(b) Steering axle - 20,000 pounds;

(c) Tandem duel wheel axle group if the combination vehicle has only five (5) axles total - 45,000 pounds (minimum of forty-two (42) inches spacing between the center of each of the axles of the tandem axle group);

(d)~~(e)~~ Tandem duel wheel axle group if the combination vehicle has six (6) or more axles total - 48,000 pounds (minimum of forty-two (42) inches spacing between the center of each of the axles of the tandem axle group);

(e)~~(f)~~ Tridem axle group - 60,000 pounds (minimum of forty-two (42) inches spacing between the center of each of the axles of the tridem axle group);

(f) A Trunum axle group;

(g)~~(e)~~ Five (5) axle combination units not exceeding~~shall not exceed~~ 96,000 pounds gross weight;

(h)~~(f)~~ Six (6) axle combination units shall not exceeding~~shall not exceed~~ 120,000 pounds gross weight;

(i)~~(g)~~ Seven (7) axle combination units shall not exceed~~shall not exceed~~ 160,000 pounds gross weight.

(4) ~~(Since bridge capacity is the weight controlling factor in most instances, these)~~ Maximum weights shall not be permitted unless all bridges and roads on the moving route~~involved~~ have sufficient capacity to accommodate the load.

Section 5. Responsibility of Permit Holder. (1) Any damage to the highway, signs, guardrail or other public or private property caused by the transportation of the specialized equipment shall be the responsibility of the permit holder. The permit holder shall either repair all damage incurred or pay for the repair.

(2) A permit holder shall not cut, trim, remove or relocate any tree, shrub, guardrail, highway sign or other object on the highway right-of-way without the written approval of the chief district engineer or their designee~~having jurisdiction over the property involved~~.

(3) The applicant shall be responsible for providing accurate information and reviewing the permit prior to travel on Kentucky highways.

Section 6. Permit Availability. (1) ~~The original of the~~ annual permit issued by the Division of Motor Carriers shall be carried in the overweight or overdimensional vehicle at all times.

(2) A valid~~The original or facsimile copy of a~~ single trip permit shall be carried in the overweight or overdimensional vehicle or equipment at all times.

(3) A valid~~The~~ annual or~~the~~ single trip permit shall be presented~~;~~ upon request~~;~~ to any law enforcement officer or authorized personnel of the Department of Vehicle Regulation.

(4) An annual permit not authenticated by the Division of Motor Carriers shall not be valid~~An unauthenticated photocopy of the annual permit shall not be valid~~.

Section 7. Duplicate Permits. (1) A duplicate permit that~~which~~ is needed to replace a lost, stolen or destroyed annual permit or to transfer the permit to another towing vehicle shall~~may~~ be obtained

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from the Division of Motor Carriers by a payment of ten (10) dollars. ~~(2)[Only]~~ One (1) transfer to another towing vehicle shall be allowed for each annual permit during its effective year.

~~(3) An[Any]~~ additional transfer of the annual permit requested shall be subject to the fees ~~established[set forth]~~ in KRS 189.270. ~~(4) The original permit shall be returned to the Division of Motor Carriers prior to the transfer of an annual permit.~~

Section 8. Travel Restrictions. (1)~~(a)~~ A single trip permit shall be valid for ~~a period not to exceed~~ ten (10) days. A time extension shall only be granted if the permit holder proves extenuating circumstances.

~~(b)~~ An annual permit shall be valid for 365 days from date of issuance.

~~(2)(a)~~ In the interest of public safety, the department may further prohibit movements in congested areas within the peak traffic hours.

~~(b)~~ The additional restrictions shall be noted on the permit when issued.

(3) Overdimensional restrictions shall not prohibit a utility company from working in an emergency situation to restore utility service to an area otherwise experiencing an outage.

Section 9. Farm Implements. (1) Unless the movement occurs on an interstate highway, toll road, or fully-controlled access highway, a permit shall not be required for transport of overdimensional farm implements ~~from[for the following trips]:~~

~~(a)[From]~~ One (1) farm to another;

~~(b)[From]~~ A farm to a repair shop or dealer; or

~~(c)[From]~~ A repair shop or dealer to a farm.

(2) A permit holder or other operator moving overdimensional farm implements shall comply with the safety requirements set forth in this administrative regulation.

(3) The following movements of farm implements shall~~[only]~~ be made under the authority of an overdimensional permit:

(a) Manufacturer to dealer;

(b) Dealer to manufacturer;

(c) Dealer to dealer; or

(d) Moves on an interstate highway, toll road, or fully-controlled access highway.

(4) On an interstate highway ~~or[;]~~ toll road~~[; or fully-controlled access highway]~~, a self-propelled farm implement shall not be:

(a) Operated; or

(b) Issued a permit for movement.

(5) A self propelled farm implement shall be issued a single trip or annual permit to operate fully-controlled access highway where its movement;

(a) Shall not create an unreasonable impedance of the flow of traffic; and

(b) Is accompanied by escorts as established in Section 11 of this administrative regulation.

(6) If the farm equipment to be transported exceeds twelve (12) feet in width[;] the farm equipment dealer who holds the annual permit shall, prior to the proposed move, survey the entire route proposed [to be used for the movement of the overdimensional farm equipment] to confirm the roads are adequate to safely accommodate the load.

(7)[(6)] If there is any doubt of the adequacy of the highway to safely accommodate the overdimensional farm equipment[;] the farm equipment dealer shall:

(a) Select a different route; or

(b) Contact the Division of Motor Carriers[appropriate highway district office] for clearance to move the equipment over that specific route.

(8)[(7)] If the Division of Motor Carriers[highway district office] does not issue clearance for the use of a particular route whose adequacy is in doubt, that route shall not be used.

Section 10. Bulldozers and Front End Loaders. (1) A blade or bucket attached to a bulldozer or front end loader that exceeds fourteen (14) feet in width shall be removed for highway movement.

(2) A blade or bucket that has been removed may be moved on a transporting vehicle without being considered a divisible load.

(3) A blade or bucket that protrudes beyond the transporting vehicle shall be loaded with the sharp edge or cutting edge of the blade or bucket facing the rear of the transporting vehicle.

Section 11. Pilot Car Escort Vehicle~~[; Safety and Flag]~~ Requirements. (1) Pilot car~~[Required]~~ escort vehicles shall accompany the overdimensional vehicle at a distance of 300 feet (91.44 meters) on open highways and shall:

(a) Maintain radio contact with the ~~loaded vehicle[lead]~~;

(b) Post identification signs or placards showing the name of the pilot car escort business and the state of business operation on both the right and left sides of the vehicle. The signs or placards shall contain lettering that:

1. Sharply contrasts with the sign or placard background color; and

2. Ensures visibility for a minimum of fifty (50) feet[appropriate signs on the vehicle];

(c) Have two (2) or more top mounted high intensity flashing or rotating amber lights visible for a full 360 degrees for a minimum of 500 feet in daylight conditions

(d) Carry replacement bulbs for the amber flashing or rotating lights in the pilot car escort vehicle at all times during a move;

(e) Securely attach a top mounted "oversize load" sign to the pilot car escort vehicle that is visible for a distance of 100 feet from both the front and rear. The sign shall be:

1. Twelve (12) inches by sixty (60) inches;

2. Have black letters that are no less than ten (10) inches high written with a one (1) inch brush stroke;

3. Clearly note the words "oversize load" on a yellow background;

4. Reflective if used at night;

5. Always maintained in good condition.

~~(f)[amber strobe lights or flashing light on the escort vehicle; and~~

(d) Keep its headlamps lit at all times and ensure that the pilot car escort vehicle lighting is in working order; and

(g) Have no less than one (1) rear view mirror on each side of the pilot car escort vehicle.

(2) A pilot car escort vehicle shall not tow cargo or equipment.

(3)[(2)] In cities or congested areas, the escort vehicle shall travel at a distance closer than 300 feet as necessary to protect other traffic.

(4)[(3)] On a two (2) lane highway, a vehicle and load with a width in excess of ten (10) feet, six (6) inches (three and two-tenths (3.2) meters) but twelve (12) feet (3.66 meters) or less shall have one (1) lead pilot car escort vehicle.

(5)[(4)] On a two (2) lane highway, a vehicle and load with a width exceeding twelve (12) feet (3.66 meters) shall have one (1) lead pilot car escort vehicle and one (1) trail pilot car escort vehicle.

(6)[(5)] On a two (2) lane highway, a vehicle and load traveling at speeds below the average driving speed of traffic on its route shall have one (1) trail pilot car escort vehicle.

(7)[(6)] On a highway that is four (4) lane or wider[highway], a vehicle and load shall have one (1) trail pilot car escort vehicle if:

(a) Its width exceeds twelve (12) feet (3.66 meters);[or]

(b) It does not maintain a speed of forty-five (45) miles per hour (72.42 kilometers per hour); or

(c) The vehicle and load have a length of 120 feet.

(8) On a four (4) lane or wider highway, a vehicle and load with a length of over 120 feet shall have a front and rear pilot car escort vehicle.

(9)[(7)] On a two (2) lane highway:

(a) A vehicle and load with a length in excess of seventy-five (75) feet (22.86 meters) but not more than eighty-five (85) feet (25.91 meters) shall have one (1) lead pilot car escort vehicle; and

(b) A vehicle and load with a length in excess of eighty-five (85) feet (25.91 meters) shall have one (1) lead and one (1) trail pilot car escort vehicle.

(10) As a special provision of the permit, and due to safety considerations, the cabinet may require additional pilot car escort vehicles, lighting, warning flags, or a height pole car.

(11)(a) A marked police escort vehicle shall be required for a movement that may result in a high probability of delay, hazard to

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the traveling public, or damage to the highway.

(b) A police escort shall not be required to display oversize signs.

Section 12. Towing Vehicle Sign and Safety Requirements. (1)(8) On a four (4) lane or wider highway:

(a) A vehicle and load with a length of 120 feet shall have one (1) trail escort; and

(b) A vehicle and load with a length of over 120 feet shall have a front and rear escort.

(9) Red or orange fluorescent flags that[which] are a minimum of eighteen (18) inches square (11,612.7 millimeters square) shall be displayed on each vehicle and load operating under the auspices of either an overlength or an overwidth permit.

(2) Vehicles operating overwidth shall display four (4) warning flags; one (1) at each of the four (4) corners.

(3)[-and] If any portion of the load extends beyond the four (4) corners, additional flags shall be displayed at the widest points of the load.

(4)(b) Vehicles operating overlength or with a rearend overhang shall display two (2) warning flags located to indicate maximum width at the extreme rear of the vehicle or load.

(5) These flags shall be located to indicate maximum width of the rearend.

(4) All vehicles exceeding ten (10) feet, six (6) inches, three and two-tenths (3.2) meters in width or having front overhang shall display two (2) warning signs. The warning signs shall:

(a) State in black letters on a yellow background, "OVERSIZE LOAD";

(b) Not be less than seven (7) feet (2.13 meters) long and eighteen (18) inches (0.46 meters) high;

(c) Have a brush stroke of one and four-tenths (1.4) inches (35.56 millimeters); and

(d) Be fastened at the front of the power unit, [and] the rearend of the towed unit, or at the rear of the load.

(6)(a)(14) If the utility equipment, pole, or pipe being transported exceeds fifty-five (55) feet (16.76 meters) in length, a front pilot car escort vehicle shall accompany the vehicle required to be permitted.

(b) If the front overhang exceeds ten (10) feet (3.05 meters), an amber strobe or flashing light shall be placed on the power unit of the towing vehicle and shall be in use any time the power unit is in operation.

(7)(42)(a) The lighting devices and reflectors set forth in 49 C.F.R. 393.11 for pole trailers and projecting loads shall be required.

(b) A[Each] lamp or light shall be used at all times that a[the] vehicle is on or beside a highway.

(c) A front overhang shall not be allowed on a combination vehicle.

Section 13.(13) As a special provision of the permit, the Department of Vehicle Regulation may require additional escort vehicles, lighting or warning flags.

(14) The provisions of this section shall not apply if the vehicle or equipment is less than twelve (12) feet wide and the vehicle or equipment is:

(a) Used in part for off-road use;

(b) Not required to be registered or licensed; and

(c) Not transporting cargo.

Section 14. House or Building Permits. (1) [Permits for movement of houses or other buildings shall be issued by the Department of Vehicle Regulation, Division of Motor Carriers.] An application for a permit to move a house or building shall be made on House Moving Application, TC Form 95-310, [TC 95-310, House Moving Application,] and submitted to the Division of Motor Carriers via mail, [or] hand delivery, or the motor carrier online permitting system at the Division of Motor Carriers, Transportation Cabinet Building, 200 Mero Street [3rd Floor, State Office Building, 604 High Street,] Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4 [4:30] p.m., or via fax at (502) 564-0992.

(2)(a) House moving permits shall [not] be issued for movements that occur [unless the movement is done] during off-peak

traffic hours [when other traffic will be least affected].

(b) The mover shall be required to furnish all escorts and flagmen required in the interest of public safety.

(3) A permit shall not be issued for the movement of a [any] permanent building other than a portable storage unit on a parkway or an interstate highway [units on either parkways, or interstate highways].

(4)(a) The Division of Motor Carriers shall contact the appropriate Department of Highways' district office for specific routing restrictions or local highway conditions prior to the issuance of a [the] permit.

(b) Specific restrictions shall be identified on the permit and [-] Deviation from the restrictions shall void the permit

Section 14. Permits for Sealed, Containerized, Ocean-Going Cargo Units. (1) A vehicle moving a sealed, containerized, ocean-going cargo unit shall be eligible for a single trip permit.

(2) A vehicle eligible for a permit shall meet the size specifications and limitations established in KRS 189.222 and Section 4 of this administrative regulation.

(3) An applicant for a permit shall submit to the Division of Motor Carriers:

(a) A completed Kentucky Overweight or Overdimensional Permit Worksheet, TC Form 95-10;

(b) A payment of sixty (60) dollars pursuant to KRS 189.270(2); and

(c) A copy of an international bill of lading signed by a customs official, or an international bill of lading with an equipment interchange and inspection report.

(4) A permit shall be valid for:

(a) One move;

(b) A duration of ten (10) days; and

(c) Twenty-four (24) hour continuous movement during the duration of the permit.

(5) An operator shall at all times during the move have in his or her possession a copy of the documents described in subsection (3)(c) of this section.

Section 15. [Section 12.] Route Deviation. All vehicles transporting a load under an annual or trip permit shall obtain prior approval from the Division of Motor Carriers for any deviation from the routes approved by the Transportation Cabinet for the towing vehicle.

Section 16. [Section 13.] Permit Required. Until an authorized [a special written] permit has been issued by the [Department of Vehicle Regulation,] Division of Motor Carriers under the provisions of this administrative regulation and KRS 189.270:

(1) An overweight or [a] overdimensional load of a width greater than eight and one-half (8 1/2) feet shall not be towed on any state-maintained highway;

(2) An overweight or [a] overdimensional load with a width greater than eight (8) feet shall not be towed on any state-maintained highway not included on the Transportation Cabinet's list of roads approved for passage of motor vehicles with increased dimensions pursuant to 603 KAR 5:070, except as provided in KRS 189.222(3); and

(3) A manufactured home with a combined length of manufactured home and towing vehicle greater than 120 feet shall not be towed upon any Kentucky highway. The manufactured home shall not exceed eighty-five (85) feet in length or sixteen (16) feet in width.

Section 17. [Section 14.] Annual Permits. (1)(a) A permit shall not be issued for the movement of an overweight or [a] overdimensional load in excess of sixteen (16) feet in width inclusive of the usual and ordinary overhang.

(b) Mirrors on a [the] towing vehicle shall not be considered in determining the [making the determination of] width of an overweight or overdimensional load.

(2) Prior to a movement of an overweight or [a] overdimensional load under the provisions of an annual permit, the permit holder shall [survey the route and] evaluate the entire route proposed to be used for the movement of the overweight or [a] overdimensional

load. The evaluation shall include the following:

- (a) Highway width;
- (b) Shoulder width and surface type;
- (c) Bridge width and posted weights;
- (d) Curves;
- (e) Turns to be negotiated;
- (f) Construction zones;
- (g) Obstructions;
- (h) Access control;
- (i) Traffic volume; and
- (j) Other routes available that might be safer even if not as convenient.

(3) The permit holder shall use the results of the evaluation to determine the safest route available to transport the overweight ~~or~~ [f] ~~overdimensional load. [The permit holder shall determine if there would be any place on the proposed route which would be too narrow, have curves or turns too sharp or have other obstacles which would prevent the route from safely accommodating the move. The route selected by the permit holder shall be the safest available.]~~

(4) If there is any doubt about the adequacy of the highway to safely accommodate the overweight ~~or~~ [f] ~~overdimensional load, the permit holder shall either:~~

- (a) Select a different route; or
- (b) Contact the Division of Motor Carriers ~~[appropriate highway district office]~~ for ~~approval~~ [clearance] to move ~~the~~ [that] ~~overweight or~~ [f] ~~overdimensional load over that specific route.~~

(5) ~~[If the highway district office does not issue clearance for the use of a route whose adequacy is in doubt, that route shall not be used.]~~

(6) An annual permit shall not be issued or used for the movement if the height of the combination load and towing vehicle exceeds thirteen (13) feet, six (6) inches.

(6) ~~(7)~~ Acceptance and use of the annual permit shall indicate the permit holder's acceptance of the liability associated with the move.

(7) ~~(8)~~ Moves of overweight ~~or~~ [f] ~~overdimensional loads more than twelve (12) feet wide shall be limited to highways of four (4) or more lanes and to the shortest and best two (2) lane route designated by the [Department of Vehicle Regulation,] Division of Motor Carriers [to be used to the unit's ultimate destination]. The cabi-~~ ~~net~~ ~~[department]~~ shall deny movements on a ~~route~~ [any routes] deemed unsuitable for move.

(9) The issuance cost of an annual and trip permit shall be that established by KRS 189.270.

Section 18. ~~[Section 15.]~~ Traffic Control. (1) If an overweight ~~or~~ [f] ~~overdimensional load while crossing a bridge would encroach on any other lane of traffic:~~

- (a) All approaching traffic shall be stopped; and
- (b) All trailing traffic shall be prevented from attempting to pass the overweight ~~or~~ [f] ~~overdimensional load until the load has cleared the bridge and has moved sufficiently to the right to safely allow following traffic to pass.~~

(2) An overweight ~~or~~ [f] ~~overdimensional load shall slow the movement of other traffic as little as possible. If traffic backs up [either] behind [or in front of] the load being moved, the escort vehicles and load shall exit the highway if there is sufficient space to do so.~~

Section 19. ~~[Section 16.]~~ Permit Validity. (1) Any vehicle hauling building materials to a home or home site shall be allowed to travel fifteen (15) miles off of any state highway classified to carry the registered weight of the vehicle for purpose of delivery.

(a) The vehicle shall:

- 1. Not be required to have a permit for overweight or overlength; and
- 2. Be within the limits of the registration and within axle weight limits.

(b) An operator shall be required to provide a bill of lading when engaged in the transportation of home building materials.

(2) (a) Travel on all overweight and overdimensional permits shall not be permitted in Boone, Kenton, Campbell, Fayette, Jefferson County (Louisville) or at the Owensboro, Kentucky 2155 bridge

from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m. Monday through Friday.

(b) An overweight or overdimensional load originating in Fayette County shall be exempt from traffic rush hour restrictions on Interstate 64 and Interstate 75 and on connecting routes to both interstates up to a distance of three (3) miles from the interstates.

(3) If satisfactory proof of an emergency is furnished to the Division of Motor Carriers, moves may be authorized during the hours restricted pursuant to KRS 189.270(11)(a).

(4) The provisions of this section shall not apply to farm implements or equipment as defined in Section 1(4) of this administrative regulation if the farm implement or equipment:

- (a) Is less than twelve (12) feet wide;
- (b) Is used in part for off-road use; and
- (c) Is not transporting cargo.

(5) Travel shall not be made in excess of the posted limitations on any bridge or other highway structure.

Section 20. ~~Inclement~~ ~~[Section 17.]~~ Weather Conditions. (1) Moves of overdimensional loads ~~[more than twelve (12) feet wide]~~ shall not be made on any highway if any of the following weather conditions exist:

(a) Winds sufficient to cause the wheels of the trailer to deflect more than six (6) inches from the path of the wheels of the drawing vehicle;

(b) Wind velocity exceeding twenty-five (25) MPH;

(c) Snow or ice covered highways; or

(d) Driving rain, fog, snow, or other atmospheric conditions that restrict visibility; [If wind velocity exceeds twenty five (25) MPH]

(2) [H] Adverse weather [conditions] or road conditions that the Kentucky State Police have determined [would cause these moves] to be dangerous.

Section 21. ~~[Section 18.]~~ Brakes. (1) The number, type, size and design of brake assemblies required to assist the towing vehicle in controlling and stopping a manufactured home or boat shall be sufficient to assure that the maximum stopping distance from an initial velocity of twenty (20) miles per hour does not exceed forty (40) feet.

(2) Manufactured homes ~~that [which]~~ are not equipped with brakes on all axles shall certify that the towing unit has sufficient brake assemblies to meet the braking distance specified in this section. Certification shall be in the form of:

(a) A manufacturer's statement;

(b) Documented technical data; or

(c) An engineering analysis or its equivalent stating that the braking distance has been met. [a] This certification shall be in the form of a manufacturer's statement, documented technical data, or adequate engineering analysis or its equivalent, specifying that the braking distance requirement has been met.]

(3) The certification [b] This certificate] shall be carried in the towing unit at all times and shall be presented upon request [;] to any law enforcement officer.

Section 22. ~~[Section 19.]~~ Annual Farm Equipment Permits. (1) An annual permit shall not be issued for the movement of the following:

(a) Self-propelled farm equipment ~~that [which]~~ exceeds thirteen (13) feet eleven (11) inches in width;

(b) A motor vehicle transporting farm equipment if the vehicle or load exceeds thirteen (13) feet eleven (11) inches in width unless the transporter is a farm equipment dealer transporting farm equipment from ~~the [his]~~ dealership to a farm, or from a farm to ~~the [his]~~ dealership;

(c) A motor vehicle transporting farm equipment ~~that [which]~~ exceeds sixteen (16) feet in width;

(d) Farm equipment if the length of the trailer and towing unit combined exceeds ninety-five (95) feet in length;

(e) Farm equipment if the length of the straight truck and load exceeds fifty-five (55) feet; or

(f) A motor vehicle transporting farm equipment if the power unit does not have sufficient horsepower or braking capacity to safely handle the load being transported.

(2) A permit for the movement of farm equipment with a width

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greater than twelve (12) feet but ~~not exceeding~~~~[which does not exceed]~~ sixteen (16) feet shall only be:

(a) Issued to a farm equipment dealer; and

(b) Valid ~~if [when he is transporting]~~ the farm equipment ~~is transferred from a [his] dealership to a farm or from a farm to a [his] dealership.~~

(3) A motor vehicle for which a permit ~~is [was]~~ issued to a farm equipment dealer to transport farm equipment with a width greater than thirteen (13) feet eleven (11) inches shall be:

(a) Titled, registered and licensed in Kentucky; or

(b) Apportioned licensed in another jurisdiction to operate in Kentucky.

Section 23.~~[24-]~~ Denial of Permit Application. (1) In accordance with 23 C.F.R. 658.17, the~~[Transportation Cabinet,]~~ Division of Motor Carriers shall deny a permit application if:

(a) The route includes any portion of the interstate highway system; and

(b) The load is divisible.

(2) The Transportation Cabinet ~~shall [may]~~ deny or restrict a permit for the use of any route if it ~~is [would be]~~ detrimental to public safety or convenience. The Transportation Cabinet shall consider the following when making a~~[the]~~ determination on the application:

(a) The strength of all bridges and structures on the route;

(b) Traffic congestion on the route;

(c) Horizontal and vertical alignment of the route;

(d) The availability of alternate routes that afford greater safety;

(e) Urban development in residential and commercial areas on the route;

(f) The proximity of schools to the route; and

(g) Any other condition that would unduly compromise public safety and convenience.

Section 24.~~[22-]~~ Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Annual Overweight or Overdimensional Permit", TC Form 95-25, August 2010;

(b) "Housing Moving Application", TC Form 95-310, November 2007;

(c) "Kentucky Overweight or Overdimensional Permit Worksheet", TC Form 95-10 August, 2010,~~[23 C.F.R. 658.17, Truck Size and Weight, Route Designations - Length, Width and Weight Limitations, April 1, 2000;~~

(b) 49 C.F.R. 393.11, Lighting Devices, Reflectors, and Electrical Equipment, October 1, 2000;

(c) Application for Annual Overweight/Overdimensional Permit, TC 95-25, July 1998; and

(d) Form TC 95-310, House Moving Application, July 2003 edition.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Motor Carriers, Transportation Cabinet Building, 200 Mero Street~~[3rd Floor State Office Building, 501 High Street]~~, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.~~[The telephone number is (502) 564-4540.]~~

THOMAS O. ZAWACKI, Commissioner

MIKE HANCOCK, Acting Secretary

APPROVED BY AGENCY: August 11, 2010

FILED WITH LRC: August 12, 2010 at 11 a.m.

CONTACT PERSON: D. Ann Dangelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ann DAngelo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the parameters and procedures for issuing overweight and overdimensional annual and trip permits.

(b) The necessity of this administrative regulation: This administrative regulation is needed to establish the process for permit

applications.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 189.270(6) requires the cabinet to promulgate administrative regulations relating to overweight and overdimensional annual and trip permits.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended regulation updates the language and forms of the former administrative regulation which dates to 2003.

(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 update the forms and procedures for the permitting process, update safety language for escort and towing vehicles, add language regarding bulldozers and front end loaders, add language regarding moves during inclement weather conditions, add language that exempts loads originating in Fayette Co. on I64 and I75 from rush hour restrictions, add language that will allow farm equipment to obtain a permit to operate on a fully controlled access highway within certain parameters and add language regarding the permitting process for vehicles moving containerized ocean-going cargo units.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to insure that the most current information is available to the public regarding permit applications. These amendments are necessary to change and update current procedures regarding the permit application process.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment updates cabinet procedures and industry standards for the movement of motor vehicles with divisible or nondivisible loads exceeding legal weights or dimensions.

(d) How the amendment will assist in the effective administration of the statutes: Persons applying for an overweight or overdimensional trip permit will have the most current information as to procedures and forms.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation impacts entities and individuals currently operating with an annual or a trip permit as well as future applicants for permits. It also impacts the cabinet's Division of Motor Carriers that issues the permits.

(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 additional costs or fees as a result of this amendment. The issuance cost of an annual and trip permit already established by KRS 189.270.

(c) As a result of compliance, what benefits will accrue to the entities identified in questions (3): Entities and individuals that qualify will be able to obtain special overweight or overdimensional permits.

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

(a) Initially: No costs are associated with these amendments.

(b) On a continuing basis: There are on-going costs related to administration of the permitting process within the cabinet and enforcement of the regulation. These amendments should not increase the current cost of the process.

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

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

(7) State whether or not this administrative regulation estab-

lished any fees or directly or indirectly increased any fees: No fees are established or increased either directly or indirectly.

(8) TIERING: Is tiering applied? Yes. Tiering is applied because restrictions on travel vary depending on safety issues and length of trip (single trip v. annual).

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts procedures in the Division of Motor Carriers.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 189.270(6), 189.271(9)(b), 189.2715(1), 189.2717(1).

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

(d) How much will it cost to administer this program for subsequent years? No subsequent costs are anticipated.

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

Revenues (+-)
Expenditures (+-)
Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Department of Workforce Investment Office of Employment and Training (Amendment)

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

RELATES TO: KRS 341.350, 341.360, 341.370, 341.380

STATUTORY AUTHORITY: KRS 151B.020, 341.115(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations deemed necessary or suitable for the proper administration of KRS Chapter 341. This administrative regulation establishes the registration and reporting requirements that an unemployed worker shall meet to draw benefits, the date when a claim shall be valid, the length of time a claim may be backdated, and the procedures for electronic, telephone, and mail claims.

Section 1. Registration for Work. (1) An unemployed worker shall be registered for work with a state employment service before he shall be eligible to receive benefits. A registration shall be considered filed if the unemployed worker completes the registration process.

(2) When an unemployed worker completes an initial application for benefits or reopens a claim, he shall be assigned a group classification code A or B based upon his reemployment prospects.

(a) Group A shall consist of any worker who is unemployed and is not subject to definite recall within a period of twelve (12) weeks from the date of filing of the initial or reopened claim.

(b) Group B shall include any worker who is:

1. Unemployed and has definite return prospects with his last employer within a period of twelve (12) weeks from the date of filing of the initial or reopened claim;

2. Unemployed because of a labor dispute in the establishment where he has been employed; or

3. A member of a union which shall be responsible for securing future employment.

(3) During any benefit year, an unemployed worker shall be assigned a different group classification code if review of his reemployment prospects reveals that a different classification is appropriate.

(4) The completion of an initial application for benefits shall serve as work registration for any group "B" unemployed worker.

Section 2. Initial or Reopened Claims for Benefits. (1) In order for an unemployed worker to file an initial or reopened claim for benefits, he shall complete:

(a) An internet claim registration through the Web site provided by the agency for that purpose at <https://uiclaims.des.ky.gov/ebenefit/>;

(b) A telephone claim registration through the call center provided by the agency for that purpose; or

(c) An in person claim registration by reporting to a state employment service office that provides unemployment insurance assistance.

(2) If any issues regarding the unemployed worker's eligibility as provided by KRS 341.350 or a potentially disqualifying circumstance as provided by KRS 341.360 or 341.370 are detected, a fact finding investigation shall be conducted during which the unemployed worker shall be responsible for:

(a) Providing picture identification and valid proof of the worker's Social Security number from the Social Security Administration; and

(b) Presenting all facts in support of the application.

(3) The initial or reopened claim shall be dated as of the first day of the week in which the unemployed worker completes the procedure established in subsection (1) of this section.

(4) Upon the presentation by the unemployed worker of reasons found to constitute good cause for failure to file at an earlier date, the secretary shall backdate the initial or reopened claim to the first day of the week in which the worker became unemployed, or the second calendar week preceding the date the worker filed, whichever is later.

Section 3. Claiming Weeks of Benefits. (1) Once an unemployed worker has filed an initial claim and established a benefit year, he shall claim his benefits on a biweekly basis by one (1) of the methods and within the time frames established in subsection (2) of this section.

(a) The unemployed worker shall claim either one (1) or both of the weeks of benefits.

~~(b) [Except as provided in paragraph (d) of this subsection, for the first two weeks of benefits claimed following the effective date of an initial or reopened claim, the unemployed worker shall claim his benefits during the calendar week following the second week of the period, except that a worker shall not claim benefits until thirteen (13) days after the day on which the worker filed the initial or reopened claim.]~~

~~(c) [Except as provided in paragraph (d) of this subsection, for every two (2) week period of benefits being claimed following the effective date of the initial or reopened claim, the unemployed worker shall claim his benefits during the calendar week following the second week of the period.]~~

~~(c) [(d)]~~ Upon the presentation by the unemployed worker of reasons the secretary finds to be good cause for the failure of the worker to claim his benefits during the prescribed week, the secretary shall allow the worker to claim benefits for the two (2) calendar weeks preceding the date on which the worker claimed his benefits. In this case the worker shall next be eligible to claim benefits for the two (2) calendar weeks following the weeks of benefits claimed late.

(2) Except as provided in subsection (3) of this section, the unemployed worker shall complete a claim for benefits:

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(a) Through the Web site provided by the agency for that purpose at <https://uicclaims.des.ky.gov/ebenefit/>, with the claim completed before midnight on the Saturday of the calendar week following the second week of the period claimed; or

(b) By telephone through the interactive voice response system provided by the agency for that purpose, with the claim completed between the hours of 2 p.m. and 9 p.m. Eastern Time on the Sunday, or between the hours of 7 a.m. and 7 p.m. Eastern Time on the Monday through the Friday of the calendar week following the second week of the period claimed.

(3)(a) The secretary shall direct an unemployed worker to claim benefits by mail if it is not possible for the worker to claim by either option provided in subsection (2) of this section due to:

1. Unavailability of those options for the type of benefits claimed;

2. Unavailability of those options due to technical problems; or

3. A physical or mental condition preventing the worker from using those options.

(b) A continued claim shall cover the week or weeks indicated on the Continued Claim Form.

(c) Any claim filed by mail shall be considered filed on the day it is deposited in the mail and postmarked as established in 787 KAR 1:230, Section 1(2).

(d) The provisions of this administrative regulation governing the dating and backdating of a continued claim shall also apply to a claim filed by mail, and unless the claim is filed within the prescribed time, it shall not be allowed.

Section 4. Employer Filed Claims. (1) An employer may file a claim on behalf of an unemployed worker if:

(a) The worker has definite recall rights within four (4) calendar weeks;

(b) The employer has a workforce of at least 100 workers at the time of the layoff;

(c) The employer submits the claim information in the required electronic format using the Mass Electronic Filing Cell Data and Formatting Guide; and

(d) Prior to the first time an employer files a claim on behalf of a worker, the employer submits a test sample of claim information and receives confirmation from the division that the information is in the required format prior to the date the period of unemployment will begin.

(2) The effective date of an employer filed claim shall be the first day of the week in which the period of unemployment began.

(3) An unemployed worker who does not file a continued claim for benefits established under an employer filed claim may file a new initial claim within the period of one (1) year from the effective date of the employer filed claim.

Section 5. Eligibility Review. The secretary may require an unemployed worker claiming benefits to report for the purpose of continued benefit eligibility review as a condition for payment of benefits. The requirement and interval for eligibility review shall be determined by:

(1) The worker's classification as established in Section 1(2) of this administrative regulation;

(2) The worker's individual employment and earning history; and

(3) The local labor market.

Section 6. (1) The secretary shall notify an unemployed worker if the secretary determines that the unemployed worker failed to file a claim for benefits or register for work within the specified time due to:

(a) The employer's failure to comply with 787 KAR Chapter 1;

(b) Coercion or intimidation exercised by the employer to prevent the prompt filing of a claim; or

(c) Failure by the division's personnel to discharge necessary responsibilities.

(2)(a) Except as provided in paragraph (b) of this subsection, an unemployed worker shall have fourteen (14) days after receipt of the notification required by subsection (1) of this section from the secretary within which to file a claim.

(b) A claim shall not be filed later than thirteen (13) weeks

subsequent to the end of the actual or potential benefit year involved.

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

(a) The initial claim application "Form 401", revised 8/10;

(b) The "Continued Claim Form", revised 10/95; and

(c) ~~(b)~~ "Mass Electronic Filing Cell Data and Formatting Guide", revised 03/07.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Director of the Division of Unemployment Insurance, 275 East Main Street, 2 CD, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

WILLIAM MONTEROSSO, Executive Director

APPROVED BY AGENCY: August 12, 2010

FILED WITH LRC: August 13, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 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 September 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 September 30, 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

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the registration and reporting requirements that an unemployed worker shall meet to draw benefits, the date when a claim shall be valid, the length of time a claim may be backdated, and the procedures for electronic, telephone and mail claims.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish procedures for unemployed workers to comply with while receiving unemployment insurance benefits.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 341.115 (1) authorizes the secretary to promulgate administrative regulations deemed necessary or suitable for the proper administration of KRS Chapter 341.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will specify the requirements for unemployed workers to register and report to the Office of Employment and Training, Division of Unemployment Insurance.

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

(a) How the amendment will change this existing administrative regulation? This amendment will add one additional week for unemployed workers to request their initial benefits. Currently, the regulation states that an unemployed worker shall claim his benefits during the calendar week following the second week of the period. The amendment would allow for benefits to be claimed in the second week as well.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide service to the

unemployed worker. Currently if an initial claim for benefits is filed late in the week of separation the claimant may only have one day to request benefits. This amendment would allow for an additional week.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 341.115 authorizes the secretary to promulgate administrative regulations deemed necessary or suitable for the proper administration of KRS Chapter 341.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide a service to the unemployed workers. There will be a positive impact to the unemployment offices located throughout the state as the need for unemployed workers to make requests for backdating and the issuance of manual payments decreases.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 8,000-9,000 initial claims for unemployment insurance benefits made each week in Kentucky. This change would provide an additional service to those individuals. The Office of Employment and Training would be responsible for updating the current processing system to accommodate this request. Also, all Kentucky employers may be impacted 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: It would not be necessary for the unemployed worker to take any steps to comply with this amendment. The Office of Employment and Training would need to provide technical resources to accommodate the necessary programming updates.

(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 unemployed worker. The Office of Employment and Training will be responsible for funding the technical upgrades. There may be a slight increase in benefit charges to employers' reserve accounts as benefits that were once not payable may now be.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The unemployed worker will receive benefits otherwise missed as a result of an untimely request. The Office of Employment and Training will experience a decrease in the issuance of determinations and appeal hearings specific to this topic.

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

(a) Initially: It will be necessary that changes are made to the processing system. These programming changes will be negligible in costs and absorbed in the course of normal operating expenses.

(b) On a continuing basis: There is no cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Unemployment Insurance is entirely federally funded. Unemployment insurance administrative funds will be used to make the necessary programming changes.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There will be no fees necessary for this change. The unemployment insurance program is entirely federally funded and technical changes necessary will be funded by unemployment insurance administrative funds.

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

(9) TIERING: Is tiering applied? This amendment deals with the reporting requirements necessary for unemployed workers. The amendment will be applied uniformly to all individuals 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 of Unemployment Insurance

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 341.350, 341.380, 341.360, 341.370

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.

(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 (+/-): None

Expenditures (+/-): None

Other Explanation:

PUBLIC PROTECTION CABINET

Department of Insurance

Division of Kentucky Access

(Amendment)

806 KAR 17:320. Kentucky Access requirements.

RELATES TO: KRS 304.2-310, 304.9-020(1), 304.17-042, 304.17-070, 304.17A-005(26), 304.17A-140, 304.17A-200(8), 304.17A-230(2), 304.17A-243, 304.17A-245, 304.17B-001-304.17B-033, 304.18-110

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17B-031(1)[~~EO 2009-535~~]

NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2009-535, signed June 12, 2009, created the Department of Insurance, headed by the Commissioner of Insurance.~~]KRS 304.2-110(1) authorizes the commissioner[~~executive director~~] to make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. KRS 304.17B-031(1) requires the department[~~office~~] to promulgate administrative regulations necessary to carry out the provisions of KRS 304.17B regarding Kentucky Access. This administrative regulation establishes eligibility, application process, effective dates of coverage, and premium payment requirements for Kentucky Access.

Section 1. Definitions. (1) "Adverse decision" means a decision the enrollee finds unfavorable that is not a coverage denial or adverse determination and that is reviewable by the department [~~office~~].

(2) "Agent" is defined in KRS 304.9-020(1).

(3) "COBRA" is defined in KRS 304.17A-005(7).

(4) "Creditable coverage" is defined in KRS 304.17A-005(8).

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- (5) "Department" means the Department of Insurance.
- (6) "Eligible individual" is defined in KRS 304.17A-005(11).
- (7) "Enrollee" is defined in KRS 304.17B-001(9).
- (8) "Future effective date" means a date no earlier than the first day of the month following the month of application and no later than a date three (3) months after the month of application.
- (9) "Government" means any political unit, including local, city, county, state, and federal authority.
- (10) "Guaranteed Acceptance Program" or "GAP" is defined in KRS 304.17B-001(11).
- (11) "Guaranteed Acceptance Program qualified individual" is defined in KRS 304.17A-005(20).
- (12) "Insurer" is defined in KRS 304.17A-005(27).
- (13) "Kentucky Access" is defined in KRS 304.17B-001(17).
- (14) "Month of application" means the earlier of:
- (a) The month in which the date of receipt is logged by the third-party administrator for the application; or
- (b) The month of the postmark date, if the application has a postmark date, before the last three (3) days of the month prior to its receipt.
- (15) "Substantially similar coverage" means individual coverage that:
- (a) Meets the definition of a health benefit plan as defined in KRS 304.17A-005(22);
- (b) Includes a deductible that is the same as or higher than the deductible in the policy for which the applicant is applying; and
- (c) Does not include policy limits that are more restrictive than the policy for which the applicant is applying.
- (16) "Third-party administrator" means the administrator selected by the department pursuant to KRS 304.17B-011(1) to administer Kentucky Access.

Section 2. Application Process. (1) An individual applying for Kentucky Access shall submit to the third-party administrator:

- (a) A completed:
1. Application form KA-1[HIPMC-KA-1];
2. Section III of application form KA-1[HIPMC-KA-1] if the individual is applying for dependent coverage when the initial application for coverage is submitted; and
3. Application form KA-2[HIPMC-KA-2] if the individual is applying for dependent coverage after the enrollee is enrolled in Kentucky Access;
- (b) Documentation as required by Section 4 of this administrative regulation; and
- (c) Premium payment for at least:
1. Two (2) months if selecting a monthly payment option;
2. Three (3) months if selecting a quarterly payment option;
3. Six (6) months if selecting a semi-annual payment option; or
4. Twelve (12) months if selecting an annual payment option.
- (2) Application processing for a paper application shall be performed as follows:
- (a) Upon receipt of an application, the third-party administrator's mail room shall log the date of receipt of the application and process the application in order of receipt.
- (b) If the premium required by subsection (1)(c) of this section is not received with the application, the third-party administrator:
1. Shall not consider the application;
2. Shall return the application to the applicant; and
3. Initiate the process for refund of premium, if necessary.
- (c) If the premium required by subsection (1)(c) of this section is received with the application, the third-party administrator shall review the application to determine if:
1. All sections of the application are completed, if necessary; and
2. All documentation required by Section 4 of this administrative regulation has been submitted.
- (d) If an application is complete pursuant to subsection (2)(c) of this section, the third-party administrator shall:
- 1.a. Verify that the premium is from a permitted source in accordance with KRS 304.17B-015[Section 5(4)(b)]; and
- b. Verify that the check for payment of the premium is paid by the applicant's bank by:
- (i) Waiting three (3) [fifteen (15)] business days; or
- (ii) Receiving documentation from the bank that the check has

cleared; and

2. On the next business day after premium has been verified, determine if the applicant is eligible for Kentucky Access coverage.

(e) If an application is not complete, the third-party administrator shall:

1. Pend the application; and
2. Notify the applicant in writing, within five (5) business days of receipt of the application, that the application is incomplete. The written notification shall:

a. Identify the missing information needed to complete the application; and

b. Give the applicant thirty (30) days to provide the information.

(f) If an applicant provides the information within thirty (30) days, the third-party administrator shall, within five (5) business days of receipt of the information:

1.a. Verify that the premium is from a permitted source in accordance with KRS 304.17B-015[Section 5(4)(b)]; and

b. Verify that the check for payment of the premium is paid by the applicant's bank by:

- (i) Waiting three (3) [fifteen (15)] business days; or
- (ii) Receiving documentation from the bank that the check has cleared; and

2. On the next business day after premium has been verified, determine if the applicant is eligible for Kentucky Access coverage.

(g) If an applicant provides incomplete or insufficient information within fifteen (15) days of the date of the notification of missing information, the third-party administrator shall:

1. Return the application to a pending status; and
2. Notify the applicant in writing, within five (5) business days of receipt of the incomplete or insufficient information, that the application continues to be incomplete. The written notification shall:

a. Identify the information needed to complete the application; and

b. Give the applicant ten (10) days to provide the information.

(h) If an applicant fails to provide the information within thirty (30) days or within the timeframe in paragraph (g)2b of this subsection, the third-party administrator shall:

1. Determine the applicant ineligible;
2. Send written notice of the determination of ineligibility within five (5) business days of the end of the allowed thirty (30) days, which shall include:

- a. The reason for ineligibility; and
- b. The right to appeal the determination in accordance with Section 7 of this administrative regulation; and
3. Initiate the process for refund of premium, if necessary.

(3) Application processing for a faxed or an electronic application shall be performed as follows:

(a) Upon receipt of an application, the third-party administrator's mail room shall log the date of receipt of the application and process applications in order of their receipt.

(b) If the premium required by subsection 1(c) of this section is not received within three (3) business days or postmarked more than three (3) business days from the date the application is electronically submitted or faxed, the third-party administrator shall:

1. Not consider the application;
2. Return the application to the applicant; and
3. Initiate the process for refund of premium, if necessary.

(c) If premium is postmarked three (3) business days or less from the date the application is electronically submitted or faxed, the third-party administrator shall review the application to determine if:

1. All sections of the application are completed, if necessary; and
2. All documentation required by Section 4 of this administrative regulation has been submitted.

(d) If an application is complete pursuant to subsection (3)(c) of this section, the third-party administrator shall:

1.a. Verify that the premium is from a permitted source in accordance with KRS 304.17B-015 [Section 5(4)(b)]; and

b. Verify that the check for payment of the premium is paid by the applicant's bank by:

- (i) Waiting three (3) [fifteen (15)] business days; or
- (ii) Receiving documentation from the bank that the check has

cleared; and

2. On the next business day after premium has been verified, determine if the applicant is eligible for Kentucky Access coverage.

(e) If an application is not complete pursuant to subsection (3)(c) of this section, the third-party administrator shall:

1. Pend the application; and

2. Notify the applicant in writing, within five (5) business days of receipt of the application, that the application is incomplete. The written notification shall:

a. Identify the missing information needed to complete the application; and

b. Give the applicant thirty (30) days to provide the information.

(f) If an applicant provides incomplete or insufficient information within fifteen (15) days of the date of the notification of missing information, the third-party administrator shall:

1. Return the application to a pending status; and

2. Notify the applicant in writing, within five (5) business days of receipt of the incomplete or insufficient information, that the application continues to be incomplete. The written notification shall:

a. Identify the information needed to complete the application; and

b. Give the applicant ten (10) days to provide the information.

(g) If an applicant provides the information within thirty (30) days, the third-party administrator shall, within five (5) business days of receipt of the information:

1.a. Verify that the premium is from a permitted source in accordance with KRS 304.17B-015 [Section 5(4)(b)]; and

b. Verify that the check for payment of the premium is paid by the applicant's bank by:

(i) Waiting three (3) [fifteen (15)] business days; or

(ii) Receiving documentation from the bank that the check has cleared; and

2. On the next business day after premium has been verified, determine if the applicant is eligible for Kentucky Access coverage.

~~(h)(4)~~ If an applicant fails to provide the information within thirty (30) days, the third-party administrator shall determine the applicant ineligible and send written notice of the determination of ineligibility within five (5) business days of the end of the allowed thirty (30) days, which shall include:

1. The reason for ineligibility; and

2. The right to appeal the determination in accordance with Section 7 of this administrative regulation.

(4) A determination of ineligibility in accordance with subsection 2(g) or subsection 3(g) of this subsection shall not preclude the applicant from filing a new application for Kentucky Access.

(5) Upon a determination of eligibility, the third-party administrator shall send to the applicant within five (5) business days:

(a) An identification card; and

(b) A health benefit plan coverage document.

(6) Upon a determination of ineligibility, the third-party administrator shall send to the applicant, within three (3) business days of the determination, a letter of notification of:

(a) The reason for the determination of ineligibility; and

(b) Right to appeal the determination in accordance with Section 7 of this administrative regulation.

Section 3. Effective Date of Coverage. (1)(a) Unless a future effective date is requested by an applicant and granted in accordance with subsection (1)(b) of this section, coverage for Kentucky Access shall be effective the first day of the month following the month of application in accordance with KRS 304.17B-019(5).

(b) Kentucky Access shall grant a future effective date, upon request, for an applicant whose prior coverage will terminate within three (3) months of the month of application. The effective date of Kentucky Access coverage shall be the first day after the applicant's prior coverage terminates.

(2) If a determination of ineligibility is overturned on appeal pursuant to Section 7 of this administrative regulation, coverage for Kentucky Access shall be effective in accordance with subsection (1) of this section.

(3) A dependent child added to an enrollee's plan shall have coverage under Kentucky Access, beginning:

(a) From moment of birth for a newborn child of an otherwise

eligible Kentucky Access enrollee, in accordance with KRS 307.17-042;

(b) On the date of filing of a petition for adoption of a child, in accordance with KRS 304.17A-140;

(c) On the date of filing an application for appointment as a court-appointed custodial guardian of a minor child, in accordance with KRS 304.17A-140; or

(d) On the first day of the month following the month of application to add to Kentucky Access a dependent child not described in paragraph (a), (b), or (c) of this subsection.

(4) A dependent spouse added to an enrollee's plan within thirty-one (31) days of a qualifying event shall have coverage under Kentucky Access beginning on the date of the qualifying event.

Section 4. Proof of Eligibility. (1) An individual shall demonstrate eligibility by providing the following to the third-party administrator in accordance with Section 2 of this administrative regulation:

(a) An eligible individual who is qualifying pursuant to KRS 304.17B-015(1) shall submit documentation of at least eighteen (18) months of prior countable, creditable coverage provided by one (1) or more previous insurers or employers and documentation that the most recent coverage was group, governmental, or church plan coverage.

(b) An individual who is qualifying pursuant to KRS 304.17B-015(2) shall submit one (1) of the following:

1. A copy of a notice of rejection from one (1) insurer for individual health care coverage substantially similar to the Kentucky Access coverage for which the individual is applying, dated within the ninety (90) day period prior to the effective date of Kentucky Access coverage or the approval date of the application, whichever is later;

2. A copy of a notice of a premium rate for individual health care coverage offered by an insurer that exceeds the Kentucky Access premium rate for substantially-similar coverage, dated within the ninety (90) day period prior to the effective date of Kentucky Access coverage or the approval date of the application, whichever is later; or

3. Documentation from a physician dated within one (1) year preceding the effective date of Kentucky Access coverage stating the diagnosis of a high-cost condition as listed in KRS 304.17B-001(14).

(c) An individual who is qualifying as a GAP-qualified individual pursuant to KRS 304.17B-015(4)(a) shall submit documentation from the GAP participating insurer identifying the applicant as a GAP-qualified individual.

(d) An individual applying as a dependent pursuant to KRS 304.17B-015(4)(a) or Section 6 of this administrative regulation shall submit the documentation required by Section 6 of this administrative regulation.

(2) Proof of current Kentucky residency, required for eligible individuals applying pursuant to KRS 304.17B-015(1), shall be established by submitting documentation which may include a copy of:

(a) A valid Kentucky driver's license ~~issued within the past three (3) months~~;

(b) A Kentucky personal identification card issued by the clerk of the applicant's county of residence ~~issued within the past three (3) months~~; or

(c) A receipt in the applicant's name for dwelling expenses in Kentucky, which shall be dated within the most recent three (3) months before the date of application for Kentucky Access. This receipt may be for one (1) of the following payments:

1. Mortgage;

2. Rent; or

3. Utility bill.

(3) Proof of twelve (12) month Kentucky residency, required for individuals applying pursuant to KRS 304.17B-015(2) shall be established by submitting documentation which may include a copy of:

(a) A valid driver's license, dated twelve (12) months or more prior to the date of application for Kentucky Access;

(b) A Kentucky personal identification card issued by the clerk of the applicant's county of residence, dated twelve (12) months or more prior to the date of application for Kentucky Access;

(c) A resident Kentucky income tax return for the most recent twelve (12) month tax period; or

(d) A receipt in the applicant's name for dwelling expenses in Kentucky dated twelve (12) months or more before the date of application for Kentucky Access for one (1) of the following payments:

1. Mortgage;
2. Rent; or
3. Utility bill.

(4) An individual who is eligible for coverage under Kentucky Access pursuant to KRS 304.17B-015(2) or (4) shall be subject to a preexisting condition exclusion for any mental or physical condition for which medical advice, diagnosis, care or treatment was recommended or received within the last six (6) month period ending on the individual's enrollment date:

(a) The exclusion time period shall not exceed a period of twelve (12) months following the enrollment date; and

(b) The exclusion shall not apply to:

1. Genetic information described as a condition in the absence of a diagnosis;
2. Domestic violence;
3. Newborn children if added to Kentucky Access within thirty-one (31) days of the date of birth; and
4. Adopted children if added to Kentucky Access on the date the child was legally placed for adoption or the date the child was legally adopted.

(5) An individual who is eligible pursuant to KRS 304.17B-015(2) or (4)(a), may submit documentation of countable, creditable coverage, if any, to reduce the preexisting condition exclusion time period as established in subsection (4)[(3)] of this section by the number of months of his countable, creditable coverage.

(6) If an individual terminated or was terminated from Kentucky Access coverage within the past twelve (12) months, he may reestablish eligibility, as permitted by KRS 304.17B-015(4)(c), by submitting written documentation of a good faith reason for the termination, including:

- (a) Loss of employment;
- (b) Moving out of state and returning;
- (c) Change in family status; or
- (d) Other situations beyond the individual's control.

Section 5. ~~Reasons for Ineligibility.~~ (1) An individual shall not be eligible for Kentucky Access if:

(a) The individual is applying as an eligible individual and one (1) of the following applies:

1. The Kentucky Access premium, deductible, coinsurance, or copayment is partially or entirely paid for or reimbursed by the person's employer; or
2. The individual's employer offers a health benefit plan. A health benefit plan may include an individual policy issued through, or with the permission of, an employer for its employees in accordance with KRS 304.17A-200(8).

(b) The individual is applying pursuant to KRS 304.17B-015(2) and the Kentucky Access premiums, deductible, coinsurance, or copayment is partially or entirely paid or reimbursed by any of the following:

1. A government-funded or sponsored program;
2. A government agency;
3. A health care provider;
4. A public or private foundation;
5. A church or church-affiliated organization;
6. An employer of the individual;
7. A business entity; or
8. A person except for the individual or the individual's:
 - a. Parent;
 - b. Adult child;
 - c. Guardian;
 - d. Spouse; or
 - e. Court-ordered payee.

(2) An individual who is applying for Kentucky Access and is entitled to premium-free Medicare Part A as determined by the Centers for Medicare and Medicaid Services shall not be eligible for coverage under Kentucky Access.

~~Section 6.] Dependent Eligibility.~~ (1) A spouse or a child may receive coverage as a dependent of an enrollee if:

(a) The spouse~~[or child]~~ is a twelve (12) month resident of Kentucky;~~[or]~~

(b) The spouse ~~[or child]~~ is a current resident of Kentucky and ~~[the enrollee]~~ is an eligible individual pursuant to KRS 304.17B-015(1); or

(c) The child is a current resident of Kentucky.

(2) A child shall be an eligible dependent if he is~~[unmarried and]~~:

(a)~~[4-]~~ Under the age of twenty-six (26)~~[nineteen (19)]~~; or

~~[b]2- A student:~~

~~a- Under the age of twenty-five (25);~~

~~b- Enrolled full-time at an accredited educational institution; and~~

~~c- Chiefly dependent upon the enrollee for support;~~

~~[b]1- Under the age of twenty-five (25) regardless of student status; and~~

~~2- Covered through the purchase of a dependent rider; or~~

~~[e] A child of any age who is:~~

1. Incapable of self-sustaining employment by reason of mental or physical disability; and
2. Chiefly dependent upon the enrollee for support.

(3) Documentation of dependent eligibility shall be submitted by the enrollee to the third-party administrator by the applicant when applying for coverage and as specified in subsection (3)(a) through (c) of this section.

(a) For eligibility pursuant to subsection (2)(a)~~[2-]~~ of this section [:

~~4-]~~ federal or state income tax records for the most recent twelve (12) month tax period, submitted annually~~[- and~~

~~2- Verification of full-time student status, submitted biannually].~~

(b) For eligibility pursuant to subsection (2)~~(b)~~~~(c)~~ of this section:

1. Federal or state income tax records for the most recent twelve (12) month tax period, submitted annually; and
2. Letter of determination of disability from the Social Security Administration.

~~(4)[An enrollee who is an eligible dependent pursuant to subsection (2)(a) of this section shall submit documentation of dependent eligibility pursuant to subsection (3) of this section within sixty (60) days after a child covered as a dependent of the enrollee reaches age nineteen (19).~~

(5) An enrollee shall submit to the third-party administrator documentation of dependent spouse eligibility, which may include a copy of:

- (a) A joint federal or state tax return for the most recent twelve (12) month tax period;
- (b) A marriage certificate; or
- (c) A signed attestation or affidavit verifying the existence of a valid marriage between the enrollee and dependent spouse.

Section 6.~~[7-]~~ Appeals. (1)(a) An applicant may request a reconsideration of a determination of ineligibility within thirty (30) days of a determination of ineligibility by filing a written explanation of the basis for the request for reconsideration with the third-party administrator.

(b) If the third-party administrator requests additional information to make a determination on the request for reconsideration, the member shall have ten (10) business days from the date of the request to provide the additional information.

(c) The third-party administrator shall render a decision within thirty (30) days of:

1. Receipt of the request for reconsideration; or
2. Receipt of additional information, if requested by the third-party administrator.

(d) If the third-party administrator grants the request for reconsideration, the third-party administrator shall condition reinstatement based upon the receipt of additional premium due for the next coverage period.

(2)(a) If Kentucky Access denies, limits, or reduces coverage for a treatment, procedure, drug, or device, an enrollee may request a reconsideration of the decision, by filing a written explanation of the basis for the request for reconsideration with the third-

party administrator, within thirty (30) days of a determination.

(b) If the third-party administrator requests additional information to make a determination on the request for reconsideration, the member shall have ten (10) business days from the date of the request to provide the additional information.

(c) The third-party administrator shall render a decision within thirty (30) days of:

1. Receipt of the request for reconsideration; or
2. Receipt of additional information, if requested by the third-party administrator.

(3)(a) If Kentucky Access denies coverage based on a plan delivery rule within the health benefit plan coverage document, an enrollee may request a reconsideration of the decision, by filing a written explanation of the basis for the request for reconsideration with the third-party administrator, within thirty (30) days of a determination.

(b) If the third-party administrator requests additional information to make a determination on the request for reconsideration, the member shall have ten (10) business days from the date of the request to provide the additional information.

(c) The third-party administrator shall render a decision within thirty (30) days of:

1. Receipt of the request for reconsideration; or
2. Receipt of additional information, if requested by the third-party administrator.

(4) An applicant may appeal the third-party administrator's decision by filing a written request for a review by the department. Within thirty (30) days of receipt, the department shall review the applicant's appeal and make a determination.

(5) An applicant may request an administrative hearing on the department's final determination in accordance with KRS 304.2-310.

Section 7.~~[9-]~~ Termination. (1) An enrollee may be terminated due to one (1) of the following:

(a) An enrollee who ceases to meet the eligibility requirements of Section 2, 4, or ~~5~~~~[6]~~ of this administrative regulation may be terminated by the third-party administrator at the end of the coverage period in which the thirty (30) day notice, required by KRS 304.17A-245(1), expires;

(b) An enrollee who fails to provide documentation of dependent eligibility in accordance with Section ~~5~~~~[6]~~(3) of this administrative regulation may be terminated by the third-party administrator at the end of the coverage period during which the documentation is required; or

(c) An enrollee who fails to provide Kentucky Access with written notification of a change in resident address may be terminated by the third-party administrator at the end of the coverage period during which notification of the incorrect address is received.

(2) Coverage under Kentucky Access shall cease:

(a) On the earlier date that:

1. An enrollee gives written notice that the enrollee is no longer a resident of Kentucky; or
2. Documented evidence is received by Kentucky Access that the enrollee is no longer a resident of Kentucky;

(b) On the later date that:

1. Written notice of termination is received from the enrollee; or
2. Written future termination is requested by the enrollee;

(c) Upon the death of the enrollee;

(d) On the date the lifetime limit of KRS 304.17B-015(4)(d) is met; or

(e) If the premium amount due for the policy period is not received by the premium due date, subject to the grace period contained in KRS 304.17-070;

(f) If premiums are paid by an unauthorized party in accordance with KRS 304.17B-015(4)(f)~~(Section 5(1)(b) of this administrative regulation)~~; or

(g) If the member becomes eligible for coverage under Medicaid or Medicare.

1. If a member is eligible for Medicaid or Medicare on the effective date of this administrative regulation, the member's coverage shall terminate on January 1, 2010.

2. If a member becomes eligible for Medicaid or Medicare subsequent to the effective date of this administrative regulation, the

member's coverage shall terminate on the date the member becomes eligible for coverage under Medicaid or Medicare.

Section 8.~~[9-]~~ Premium. (1) Premiums for Kentucky Access shall be billed by the third-party administrator by the first business day of each month for the following month's coverage.

(2) Premiums not received by the premium due date, subject to the grace period contained in KRS 304.17-070, shall result in termination of Kentucky Access coverage effective the last date through which the premium was paid in accordance with KRS 304.17A-245(2).

(3) Premiums may be paid in advance by arrangement with the third-party administrator as follows:

- (a) Monthly;
- (b) Quarterly;
- (c) Semiannually; or (d) Annually.

(4) Premium payments shall be accepted from an authorized party, in accordance with KRS 304.17B-015(4)(f)~~(Section 5(1)(b) of this administrative regulation)~~ in the following formats:

- (a) Paper check;~~[or]~~
- (b) On-line banking payment; or
- (c) Electronic funds transfer arranged in advance with the third-party administrator.

(5) Premium amounts for any dependent added to Kentucky Access shall be prorated based on the effective date of coverage.

(6) Premium amounts for coverage issued by Kentucky Access are reviewed and are subject to change by the department on an annual basis pursuant to KRS 304.17B-013.

(a) A new enrollee shall be charged the premium rate(s) in force on his effective date of coverage.

(b) An established enrollee shall be charged the premium rate(s) in force on each renewal date.

Section 9.~~[10-]~~ Nonduplication of Benefits. (1) Pursuant to KRS 304.17B-019(9), Kentucky Access shall be the payor of last resort whenever any other benefit or source of third-party payment is payable. Benefits otherwise payable under Kentucky Access shall be reduced by all amounts paid or payable through:

- (a) Other health insurance; or
- (b) Hospitalization and medical expense benefits covered under:

1. Workers' compensation coverage;
2. Automobile medical payment or liability insurance; or
3. Any state or federal law or program.

(2) Pursuant to KRS 304.17B-007(3), the ~~department~~~~(office)~~ shall have a cause of action against an enrollee for the recovery of the amount of benefits paid by Kentucky Access that are not for covered expenses.

Section 10.~~[11-]~~ General Provisions. Information required to be submitted pursuant to Sections 2 and ~~6~~~~[7]~~ of this administrative regulation shall be considered received in a timely manner if it is postmarked three (3) or more business days before the date the required information is due.

Section 11.~~[12-]~~ Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Application form ~~KA-1~~~~[HIPMC-KA-1]~~", 7/2010~~[7/2009]~~; and
- (b) "Application form ~~KA-2~~~~[HIPMC-KA-2]~~", 7/2010~~[7/2009]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department Web site at <http://insurance.ky.gov>.

SHARON P. CLARK, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: July 27, 2010

FILED WITH LRC: July 29, 2010 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2010 at 9 a.m. at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this

agency in writing by September 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 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 September 30, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: DJ Wasson, Staff Assistant, Kentucky Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes eligibility requirements, the application process, effective dates of coverage, premium payment requirements, reasons for termination and appeal rights for Kentucky Access.

(b) The necessity of this administrative regulation: KRS 304.17B-031 requires the Department of Insurance to promulgate administrative regulations regarding Kentucky Access. This administrative regulation is needed to inform individuals seeking coverage in Kentucky Access of the process for application and the dates their coverage will be effective. This administrative regulation is also needed to inform existing members of premium payment requirements, reasons for termination and appeal rights.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner of the Department of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. KRS 304.17B-031 requires the Department of Insurance to promulgate administrative regulations regarding Kentucky Access. This administrative regulation establishes eligibility requirements, the application process, effective dates of coverage, premium payment requirements, reasons for termination and appeal rights for Kentucky Access.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will establish the specific procedures that must be followed to become a member of Kentucky Access and to maintain coverage through Kentucky Access.

(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 implement changes to Kentucky Access statutes enacted in 10 RS HB 165 and federal law related to the age of dependents. This amendment will also make changes to the application process to set specific time frames for identifying, requesting and providing missing information and clearly allow for on-line premium payments.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to implement legislation enacted by the 2010 General Assembly, and to provide clarity to the Kentucky Access procedures based on commonly asked questions.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner of the Department of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. KRS 304.17B-031 requires Commissioner of Insurance to promulgate administrative regulations regarding Kentucky Access. The amendments to this administrative regulation clarify the application process, expand the definition of dependents that are eligible for coverage, allows for on-line premium payments, and conforms the

regulation to newly enacted laws.

(d) How the amendment will assist in the effective administration of the statutes: The amendments to this administrative regulation will clarify the process for applications received without necessary documentation, allow for on-line premium payments as requested by numerous members and provide conforming amendments for compliance with state and federal law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the approximately 4,618 members of Kentucky Access, an undetermined number of future applicants to Kentucky Access and the program's third-party administrator.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The program's third-party administrator will be required to establish an internal process to address applications received without the required documentation and adjust the current rules related to dependent eligibility. Individuals applying for and current members of Kentucky Access will be required to follow the processes set forth this amendment in order to obtain and maintain their coverage through Kentucky Access.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment does not include additional costs for applicants for or current members of Kentucky Access. The existing administrator contract includes allowances for the program amendments included in this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, individuals can obtain and maintain coverage through Kentucky Access. By complying with this amendment, the program's third-party administrator will avoid penalties as established within its existing contract.

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

(a) Initially: The day-to-day operations of Kentucky Access are handled by a third party administrator. The contract is competitively bid for a 4-year period with the option to renew for another two years. The contract amount for July 1, 2010 through June 30, 2011 is \$7,000,000.

(b) On a continuing basis: The cost will be approximately \$7,000,000 for each year.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The budget of the Kentucky Department of Insurance will be used for implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all applicants and members of Kentucky Access.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance as the implementer of the regulation and, specifically, the Kentucky Access program.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110, 304.17B-031

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

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

This administrative regulation will not generate revenue for the Department of Insurance for the first year.

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

(c) How much will it cost to administer this program for the first year? This regulation should initially cost \$7,000,000. This amount is based on the current, competitively bid contract for the administration of Kentucky Access. The amount to administer Kentucky Access for FY 10-11 is \$7,000,000.

(d) How much will it cost to administer this program for subsequent years? This regulation should cost approximately \$7,000,000 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:

PUBLIC PROTECTION CABINET
Department of Financial Institutions
Non-Depository Division of Financial Institutions
(Amendment)

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

RELATES TO: KRS 286.8-010(1), KRS 286.8-170(1), 286.8-125[286.8-020(1)(a)]

STATUTORY AUTHORITY: KRS 286.8-140(1)[KRS 286.8-010(1)(a)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.8-140(1) authorizes the commissioner[executive director] to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 286.8. This administrative regulation establishes definitions for 808 KAR Chapter 12.

Section 1. Definitions. (1) "Amount financed" means the face amount of the mortgage note as that term is used in KRS 286.8-125.

(2) "Control person" means the following:

(a) A director, general partner, managing member, or executive officer;

(b) Any person who:

1. Directly or indirectly has the right to vote ten (10) percent or more of a class of a voting security; or

2. Has the power to sell or direct the sale of ten (10) percent or more of a class of voting securities;

(c) In the case of a partnership or limited liability company, any person that has the right to receive upon dissolution ten (10) percent or more of the capital; or

(d) Any person that exercises control.[Definition: "Control" means the power to vote twenty-five (25) percent or more of any class of voting stock of the company.]

ROBERT D. VANCE, Secretary

CHARLES A. VICE, Commissioner

APPROVED BY AGENCY: August 4, 2010

FILED WITH LRC: August 13, 2010 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on

September 22, 2010 at 10 a.m., EDT, in the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 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 canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 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: Shaun T. Orme, Assistant General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390 ext. 282, fax (502) 573-2183.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shaun T. Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes definitions for 808 KAR Chapter 12 and KRS Chapter 286.8.

(b) The necessity of this administrative regulation: The regulation prescribes the definition of terms used in KRS Chapter 286.8 and 808 KAR Chapter 12.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 286.8-140(1) authorizes the executive director to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 286.8.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Provides clarity and interpretation to terms utilized in KRS Chapter 286.8 and 808 KAR Chapter 12 that are not otherwise defined.

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

(a) How the amendment will change this existing administrative regulation: It eliminates the definition of "control" and adds definitions for terms utilized in KRS Chapter 286.8 and 808 KAR Chapter 12.

(b) The necessity of the amendment to this regulation: It will provide definitions for terms utilized in the statute that are not otherwise defined

(c) How the amendment conforms to the content of the authorizing statute: It adds definitions to clarify the basic purposes of KRS Chapter 286.8 and 808 KAR Chapter 12.

(d) How the amendment will assist in the effective administration of the statutes: It will provide definitions for previously undefined terms.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Mortgage loan originators, mortgage loan processors, mortgage loan companies, mortgage loan brokers and branches thereof who engage in the mortgage lending process in Kentucky.

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

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

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Clearly defined terms utilized in KRS Chapter 286.8 and 808 KAR Chapter 12 will make it easier for such entities to comply with applicable requirements.

(4) 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: 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: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None.

(9) TIERING: Is tiering applied? No. Tiering is not applicable as definitions and terms apply equally to all individuals or entities regulated.

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 Financial Institutions.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The statutory authority for this administrative regulation is found in KRS Chapter 286.8, 808 KAR Chapter 12 and the Housing and Economic Recovery Act of 2008, Title V, the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, 15 U.S.C. §§5101, *et seq.* (the "S.A.F.E. Act").

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 regulatory amendment will have no impact on 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? This administrative regulatory amendment will not generate revenue in the first year.

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

(c) How much will it cost to administer this program for the first year? There will be no additional cost as this administrative regulation simply clarifies definitions of terms.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET Department of Financial Institutions Non-Depository Division of Financial Institutions (Amendment)

808 KAR 12:020. Claims of Exemption.

RELATES TO: KRS 286.8-020(2), 286.8-020(3)~~[KRS 286.8-020]~~

STATUTORY AUTHORITY: KRS 286.8-140(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.8-020(3) requires a person relying upon an exemption established in

KRS 286.8-020(1)(h) or (2)(a) or (b)~~[(2)(c) or (d)]~~ to file with the commissioner~~[executive director]~~ a written application for a claim of exemption. This administrative regulation establishes the procedure for filing a written application for a claim of exemption pursuant to KRS 286.8-020(3) and sets forth certain notification requirements for persons holding or applying for this claim of exemption.

Section 1. A mortgage loan company, mortgage loan broker, or branch thereof~~[person]~~ filing an initial written application for a claim of exemption under KRS 286.8-020(2)(a) or (b)~~[KRS 286.8-020(3)]~~ shall:

(1) Submit a completed application for a mortgage loan company or~~and/or~~ mortgage loan broker exemption~~[form]~~; and

(2)~~[Enclose with the application documentation that supports the applicant's claim of exemption; and~~

~~(3) Enclose a fee in the amount of \$150.~~

Section 2. A mortgage loan company, mortgage loan broker, or branch thereof seeking a renewal of its claim of exemption under KRS 286.8-020(2)(a) or (b) shall:

(1) Submit a completed application for a mortgage loan company or mortgage loan broker exemption;

(2) Enclose with the application a completed HUD-exempt FHA loan report reflecting at least twelve (12) Federal Housing Administration-insured loans on Kentucky residential real properties during the previous twelve (12) months; and

(3) Enclose a fee in the amount of \$150.

Section 3. Each year, a mortgage loan company, mortgage loan broker, or branch thereof filing a written application for a claim of exemption under KRS 286.8-020(1)(h) shall:

(1) Submit a completed application for a mortgage loan company and/or mortgage loan broker exemption; and

(2) Enclose a fee in the amount of \$150.

Section 4. A mortgage loan company, mortgage loan broker, or branch thereof that either holds a claim of exemption under KRS 286.8-020(3) or has a pending application under Section 1 or 2 of this administrative regulation shall notify the commissioner within ten (10) days:

(1) Of a change of address; or

(2) That it has ceased or no longer intends to do business in Kentucky.~~[Within ten (10) days of the change, a person who submits an application under Section 1 of this administrative regulation shall notify the executive director:~~

~~(1) Of a change of address of the applicant; or~~

~~(2) That the applicant has ceased to do business in Kentucky.]~~

Section 5.~~[3.]~~ Incorporation by Reference. The following material is incorporated by reference:

(a) "Application for a Mortgage Loan Company or Mortgage Loan Broker HUD Exemption", updated 08/2010;

(b) "HUD-exempt FHA Loan Report", updated 08/2010; and

(c) "Application for a Mortgage Loan Company or Mortgage Loan Broker Non-Profit Exemption", updated 08/2010.~~[Application for a Mortgage Loan Company and/or Mortgage Loan Broker Exemption, 1998 edition", is incorporated by reference.]~~

(2) This material may be inspected, copied, or obtained at the Department~~[Office]~~ of Financial Institutions, 1025 Capital Center Drive, Suite 200~~[477 Versailles Road,]~~ Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m. or at <http://www.kfi.ky.gov> ~~[4:30 p.m.].~~

ROBERT D. VANCE, Secretary

CHARLES A. VICE, Commissioner

APPROVED BY AGENCY: August 4, 2010

FILED WITH LRC: August 13, 2010 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on September 22, 2010 at 10 a.m., in the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 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 canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 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: Shaun T. Orme, Assistant General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390 ext. 282, fax (502) 573-2183.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shaun T. Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation reflects a change from executive director to commissioner, advises of a change of address for the Department of Financial Institutions, and sets forth the notification requirements for persons exempt from certain regulations on an annual basis.

(b) The necessity of this administrative regulation: The regulation prescribes the requirements for a mortgage loan company, mortgage loan broker, or branch thereof seeking a claim of exemption from regulation and clarifies the documentation required. In addition, it corrects clerical information regarding the Department of Financial Institutions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 286.8-140(1) authorizes the executive director to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 286.8.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Provides clarity and interpretation to a mortgage loan company, mortgage loan broker, or branch thereof seeking a claim of exemption from regulation and clarifies the documentation required. In addition, it corrects clerical information regarding the Department of Financial Institutions.

(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 reflects a change from executive director to commissioner, advises of a change of address for the Department of Financial Institutions, and sets forth the notification requirements for persons exempt from certain regulations on an annual basis.

(b) The necessity of the amendment to this regulation: To provide clarity and interpretation regarding the requirements for entities seeking exemption from regulation on an annual basis. In addition, it makes clerical corrections regarding the address and head of the Department of Financial Institutions.

(c) How the amendment conforms to the content of the authorizing statute: It corrects clerical errors in nomenclature and address for the Department of Financial Institutions and sets out notification requirements for certain exempt companies under KRS 286.8-020.

(d) How the amendment will assist in the effective administration of the statutes: It will provide clarity and interpretation regarding the requirements for entities seeking exemption from regulation on an annual basis. In addition, it makes clerical corrections regarding the address and head of the Department of Financial Institutions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Mortgage loan companies, mortgage loan brokers, and any branch thereof who engage in the mortgage lending process in Kentucky and seeks to be exempt from certain regulatory requirements.

(4) Provide an analysis of how the entities identified in question

(3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: Each year, the regulated entity would complete an application, provide a report of HUD-exempt loans, and pay a \$150 annual fee as required by statute.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): \$150 annually

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): An entity that demonstrates entitlement to the exemption will be exempt from certain regulation and licensing requirements.

(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: Fees generated cover the cost.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulatory amendment does not increase the fee, but the enabling statute increased the fee from a one-time payment to an annual basis requirement.

(9) TIERING: Is tiering applied? No. Tiering is not applicable. The statute sets forth requirements for being exempt and the process for applying for exemption should not vary other than accounting for the different statutory requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The statutory authority for this administrative regulation is found in KRS Chapter 286.8, 808 KAR Chapter 12 and the Housing and Economic Recovery Act of 2008, Title V, the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, 15 U.S.C. 5101, et seq. (the "S.A.F.E. Act").

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 regulatory amendment will result in additional annual revenue depending on the number of entities that seek exemption.

(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? It is uncertain how much revenue this administrative regulatory amendment will generate because application for the exemption is voluntary. Currently, there are approximately sixty-one (61) exempt entities to which this administrative regulation applies.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is uncertain how much revenue this administrative regulatory amendment will generate because application for the exemption is voluntary. Currently, there are approximately sixty-one (61) exempt entities to which this administrative regulation applies.

(c) How much will it cost to administer this program for the first year? There will be no additional cost as any fees generated will

cover the costs.

(d) How much will it cost to administer this program for subsequent years? There will also be no additional cost to administer this program in subsequent years as any fees generated cover the costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amendment)**

810 KAR 1:001. Definitions.

RELATES TO: KRS ~~Chapter 230~~~~[230.240-230.360]~~

STATUTORY AUTHORITY: KRS ~~230.215, 230.225(7), 230.260, 230.370~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS ~~230.215(2) grants the commission the authority to regulate conditions under which thoroughbred racing shall be conducted in Kentucky. KRS 230.260(8) grants the commission the authority to prescribe necessary and reasonable administrative regulations and conditions under which horse racing at a horse race meeting shall be conducted in this state. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating mutuel wagering on horse races under the pari-mutuel system of wagering. This administrative regulation defines the terms used in 810 KAR Chapter 1.~~
~~[To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this administrative regulation is to define the terms used in the authority's administrative regulations.]~~

Section 1. Definitions. (1) "Added money" means cash, exclusive of trophy or other award, added by the association to stakes fees paid by subscribers to form the total purse for a stakes race.

(2) "Administrative regulation" when used in the singular means a specific numbered administrative regulation.

(3) "Administrative regulations" when used in the plural, means all current administrative regulations promulgated by the commission.

(4)~~(2)~~ "Age" means the number of years since a horse was foaled, reckoned as if the horse was foaled on January 1 of the year in which the horse was foaled.

(5)~~(3)~~ "Arrears" means all sums due by a licensee as reflected by his or her account with the horsemen's bookkeeper, including subscriptions, jockey fees, forfeitures, and any default incident to these administrative regulations.

(6) "Association" is defined by KRS 230.210(1).

(7) "Authority" is defined by KRS 230.210(2).

(8)~~(4)~~ "Association" means any person or legal entity, required to be licensed under KRS 230.300 to conduct a race meeting, and when used herein, the association conducting a race meeting where such rule is applicable.

(5) "Authority" means the Kentucky Horse Racing Authority.

(6)~~(5)~~ "Authorized agent" means any person currently licensed as an agent for a licensed owner or jockey~~[principal]~~ by virtue of notarized appointment of agency ~~filed~~~~[pledged]~~ with the ~~commission~~~~[authority]~~.

(9)~~(7)~~ "Betting interest" means a single horse, or more than one (1) horse joined as a mutuel entry or joined in ~~a~~~~[the]~~ mutuel field, on which a single pari-mutuel wager may be placed.

(10)~~(8)~~ "Bleeder" means any horse known to have bled internally or from its nostrils during a workout or race.

(11) "Breakage" means the net pool minus payout.

(12)~~(9)~~ "Breeder" means the owner of the dam of a horse at the time the horse was foaled. A horse is "bred" at the place of its foaling.

(13) "Calendar days" means consecutive days counted irrespective of number of racing days.

(14) "Carryover" means nondistributed pool monies which are retained and added to a corresponding pool in accordance with 810 KAR Chapter 1.

(15)~~(40)~~ "Claiming race" means any race in which every horse running therein may be transferred in conformity with these administrative regulations.

(16)~~(44)~~ "Closing" means the time published by the association after which entries for a race will not be accepted by the racing secretary.

(17) "Commission" means the Kentucky Horse Racing Commission (formerly known as the Kentucky Horse Racing Authority and defined in KRS 230.210(2)) when used in the context of the administrative agency governing horse racing and pari-mutuel wagering; when used in the context of pari-mutuel wagering, means the amount an association is authorized to withhold from a pari-mutuel wager pursuant to KRS 230.3615.

(18)~~(42)~~ "Day" means any twenty-four (24) hour period beginning at 12:01 a.m. and ending at midnight.

(19) "Dead heat" means a finish of a race in which the noses of two (2) or more horses reach the finish line at the same time.

(20)~~[Racing day means a day on which races are conducted. Calendar days means consecutive days counted irrespective of number of racing days.]~~

(43) "Declaration" means the withdrawal of a horse entered in a race prior to time of closing of entries therefore in conformance with 810 KAR Chapter 1.

(21) "Designated area" means any enclosed area that the commission has approved for the location of terminals used for wagering on an historical horse race.

(22) "Disciplinary action" means action taken by the stewards or the commission for a violation of a statute or administrative regulation and can include, refusal to issue or renew a license, revocation or suspension of a license, imposition of probationary conditions on a license, issuance of a written reprimand or admonishment, imposition of fines or penalties, denial of purse money, forfeiture of purse money, or any combination thereof.

(23)~~(44)~~ "Disciplinary action" means action taken by the stewards or the authority for a violation of an administrative regulation and can include suspension, revocation, voidance of a license, ejection or exclusion from association grounds, assessment of a forfeiture, or reprimand, any combination thereof.

(45) "Disqualification" means a ruling of the stewards or the ~~commission~~~~[authority]~~ revising the order of finish of a race.

(24)~~(46)~~ "Entry" means the act of nominating a horse for a race in conformance with these administrative regulations.

(25)~~(47)~~ "Equipment" means accoutrements~~[accouterments]~~ other than ordinary saddle, girth, pad, saddle cloth, and bridle carried by a horse, and includes whip, blinkers, tongue strap, muzzle, hood, noseband, bit, shadow roll, martingale, breast plate, bandages, boots, and racing plates or shoes.

(26)~~(48)~~ "Exhibition race" means a race between horses of diverse ownership for which a purse is offered by the association, but on which no pari-mutuel wagering is permitted.

(27) "Exotic wager" means any pari-mutuel wager placed on a live or historical horse race other than a win, place, or show wager placed on a live horse race.

(28) "Field" or "mutuel field" means a single betting interest involving more than one (1) horse which is not a mutuel entry.

(29)~~(49)~~ "Field, or mutuel field" means a single betting interest involving more than one (1) horse formed when the number of horses starting in a race exceeds the numbering capacity of the totalizer, and the highest numbered horse within the numbering capacity of the totalizer and all horses of a higher number are grouped in the mutuel field.

(20) "Forfeit" means money due by a licensee because of an error, fault, neglect of duty, breach of contract, or alternative ruling of the stewards or the ~~commission~~~~[authority]~~.

(30)~~(24)~~ "Handicap race" means a race in which the weights to be carried by the horses therein are assigned by the association handicapper with the intent of equalizing the chances of winning for all horses entered in the race. A "free handicap" means a handicap for which no nominating fee is required to be weighted, but an entrance or starting fee may be required for starting therein.

(31) "Handle" means the aggregate of all pari-mutuel pools.

excluding refundable wagers.

(32) "Historical horse race" means any horse race that was previously run at a licensed pari-mutuel facility located in the United States and that concluded with official results. An historical horse race must have concluded without scratches, disqualifications, or dead-heat finishes.

(33)(22) "Horse" means a thoroughbred registered with The Jockey Club ~~in New York~~ and when used in these administrative regulations, any thoroughbred irrespective of age or sex designation.

(34)(23) "Ineligible" means a horse or person not qualified under these administrative regulations or conditions of a race to participate in a specified racing activity.

(35) "Initial seed pool" means a nonrefundable pool of money funded by an association in an amount sufficient to ensure that a patron will be paid the minimum amount required on a winning wager on an historical horse race.

(36)(24) "Jockey" means a rider currently licensed to ride in races as a jockey, apprentice jockey, amateur jockey, or a provisional jockey permitted by the stewards to ride in three (3) races prior to applying for a license.

(37)(25) "Lessee" means a licensed owner whose interest in a horse is a leasehold ~~leaseholder~~.

(38) "Licensed premises" means the location and physical plant described in response to question P of the "Commonwealth of Kentucky Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, and Pari-Mutuel Wagering" filed for racing to be conducted in 2010. Licensed premises may also include real property of an association, if the association receives approval from the commission for a new location at which live racing will be conducted.

(39) "Licensee" means an individual, firm, association, partnership, corporation, trustee, or legal representative ~~means a person or association~~ that has been duly issued a currently valid license to participate in racing in ~~the~~ ~~this~~ Commonwealth.

(40)(27) "Maiden" means a horse which has never won a race on the flat at a recognized meeting in any country. A maiden which was disqualified after finishing first remains a maiden. Race conditions referring to maidens shall be interpreted as meaning maidens at the time of starting.

(41)(28) "Match race" means a race between two (2) horses ~~;~~ for which no other horses are eligible.

(42)(29) "Meeting" means the entire period of consecutive days, exclusive of dark days, granted by the commission ~~authority~~ to a licensed association for the conduct of live horse racing. A meeting shall begin at 10 a.m. of the first racing day and extend through a period ending one (1) hour after the last scheduled race of the last day.

(43) "Minus pool" means a pari-mutuel pool in which the amount of money to be distributed on winning wagers exceeds the amount of money contained in the net pool.

(44)(30) "Month" means calendar month.

(45)(31) "Mutuel entry" means a single betting interest involving two (2) or more horses entered in the same race and joined for pari-mutuel purposes because of common ties as to ownership or training so that a wager on one (1) horse joined in a mutuel entry is a wager on all horses joined in the same mutuel entry.

(46) "Net pool" means the total amount wagered less refundable wagers and takeout.

(47) (32) "Mutuel field" means the same as "field."

(33) "Nominator" means the person in whose name a horse is ~~is~~ entered for a race. "Nomination" is a subscription or entry of a horse in a stakes or early closing race.

(48)(34) "Owner" means any person who holds, in whole or in part, any right, title, or interest in a horse, or any lessee of a horse, who has been duly issued a currently valid owner's license as a person responsible for the horse.

(49) "Pari-mutuel wagering," "mutuel wagering," or "pari-mutuel system of wagering" each means a system or method of wagering approved by the commission in which patrons are wagering among themselves and not against the association and amounts wagered are placed in one or more designated wagering pools and the net pool is returned to the winning patrons.

(50) "Patron" means an individual present at a track or a simul-

cast facility who observes or wagers on a live or historical horse race.

(51) "Payout" means the amount of the net pool payable to an individual patron on his or her winning wager.

(52)(36) "Place," when used in the context of a single position in the order of finish in a race, means second; when used in the context of pari-mutuel wagering, a "place" wager means one involving a payoff on a betting interest which finished first or second in a race; when used in the context of multiple positions in the order of finish in a race, "place or placing" means finishing first, or second.

(53)(36) "Post" means the starting point of a race.

(54)(37) "Post position" means the relative place assigned to each horse, numbered from the inner rail across the track at the starting line, from which each horse is to start a race.

(55)(38) "Post time" means the advertised moment scheduled for the arrival of all horses at the starting point for a race.

(56)(39) "Prize" means the combined total of any cash, premium, trophy, and object of value added to the owners of horses according to order of finish in a race.

(57)(40) "Purse" means the gross cash portion of the prize for which a race is run.

(58)(41) "Purse race" means any race for which entries close at a time designated by the racing secretary ~~less than seventy-two (72) hours prior to its running~~, and for which owners of horses entered are not required by its conditions to contribute money toward its purse.

(59)(42) "Race" means a running contest between thoroughbreds, ridden by jockeys, over a prescribed course free of obstacles or jumps, at a recognized meeting, during regular racing hours, for a prize.

(60) "Race day" means any period of twenty-four (24) hours beginning at 12:01 a.m. and ending at midnight on which live racing is conducted by an association.

(61)(43) "Racing official" means a racing commission ~~authority~~ member, commission ~~authority~~ staff as duties require, and all association racing department employees, as duties require.

(62)(44) "Recognized meeting" means any meeting with regularly scheduled live horse races for thoroughbreds on the flat, licensed by and conducted under administrative regulations promulgated by a governmental regulatory body, to include foreign countries which are regulated by a racing authority which has reciprocal relations with The Jockey Club ~~of New York~~ and whose race records can be provided to an association by The Jockey Club.

(63)(45) "Registration certificate" means the document issued by The Jockey Club ~~of New York~~ certifying ~~as to~~ the name, age, color, sex, pedigree, and breeder of a horse as registered by number with The Jockey Club. It shall be deemed to refer also to the document known as a "racing permit" issued by The Jockey Club in lieu of a registration certificate when a horse is recognized as a thoroughbred for racing purposes in the United States, but is not recognized as a thoroughbred for breeding purposes insofar as registering its progeny with the Jockey Club.

(64) "Result" means the part of the official order of finish in a race used to determine the pari-mutuel payoff of pools.

(65)(46) "Administrative regulations" when used in the plural, shall be deemed to mean all current administrative regulations promulgated by the authority; when used in the singular, shall be deemed to be confined to the numbered administrative regulation.

(47) "Rulings" means all determinations, decisions, or orders of the stewards or of the commission ~~authority~~ duly issued in writing and posted.

(66)(48) "Scratch" means the withdrawal of a horse entered for a race after the time of closing of entries therefore in conformance with these administrative regulations.

(67)(49) "Scratch time" means the time set by the racing secretary as a deadline for horsemen to indicate their desire to scratch out of a race.

(68)(50) "Secretary" means the duly appointed and currently serving secretary of the commission.

(69) "Seed pool" means a pool of money funded by patrons wagering on an historical horse race that is used to ensure that patrons are paid the minimum payout on winning wagers.

~~(70)[authority-~~

~~(64)]~~ "Specimen" means a sample of blood, urine, or other biologic sample~~[specimen]~~ taken or drawn from a horse for chemical testing.

~~(71)[(62)]~~ "Stakes" means all fees paid by subscribers to an added-money or stakes race for nominating, eligibility, entrance, or starting, as may be required by the conditions of the race. These fees shall be included in the purse.

~~(72)[(63)]~~ "Stakes race" means a race which closes more than seventy-two (72) hours in advance of its running and for which subscribers contribute money towards its purse, or a race for which horses are invited by an association to run for a guaranteed purse of \$50,000 or more without payment of stakes. With the exception of stakes races in North America, "stakes race" shall exclude races not listed by The Jockey Club Information System International Cataloguing Standards, Part One (1).

~~(73)~~ "Steward"~~[(64) "Stewards"]~~ means a duly appointed racing official~~[officials]~~ with powers and duties specified in 810 KAR 1:004 serving at a current meeting in ~~the~~~~[this]~~ Commonwealth.

~~(74)[(65)]~~ "Starter" means a horse in a race when the starting-gate doors open in front of it at the moment the starter dispatches the horses for a race.

~~(75)[(66)]~~ "Subscription" means nomination or entry of a horse in a stakes race.

~~(76)~~ "Takeout" means the total amount of money, excluding breakage and any amounts allocated to a seed pool, withheld from each pari-mutuel pool, as authorized by KRS 230.3615 and 810 KAR Chapter 1.

~~(77)~~ "Terminal" means any self-service totalizator machine or other mechanical equipment used by a patron to place a pari-mutuel wager on a live or historical horse race.

~~(78)[(67)]~~ "Thoroughbred racing" means running contests between horses registered with The Jockey Club~~[of New York]~~, certified as having a thoroughbred pedigree, and ridden by a jockey. Thoroughbred racing shall be licensed by a governmental regulatory body.

~~(79)~~ "Totalizator" means the system, including hardware, software, communications equipment, and electronic devices that accepts and processes the cashing of wagers, calculates the odds and prices of such wagers, and records, displays, and stores pari-mutuel wagering information.

~~(80)~~ "Unplaced" means a horse that finishes a race outside the pari-mutuel payoff.

~~(81)[(69) (58)]~~ "Unplaced" means not among the first three (3) horses finishing a race. "Walkover" means a race in which the only starter or all starters represent single ownership.

~~(82)[(60)]~~ "Weigh in" means the presentation of a jockey to the clerk of scales for weighing after a race.

~~(83)[(61)]~~ "Weigh out" means the presentation of a jockey to the clerk of scales for weighing prior to a race.

~~(84)[(62)]~~ "Weight for age" means the standard assignment of pounds to be carried by horses in races at specified distances during specified months of the year, scaled according to the age of the horse as set out in 810 KAR 1:014(12).

~~(85)[(63)]~~ "Workout" means the training exercise of a horse on the training track or main track of an association during which the horse is timed for speed over a specified distance.

~~(86)[(64)]~~ "Year" means twelve (12) consecutive months beginning with January and ending with December.

Section 2. Severability. In the event that any provision or administrative regulation of this chapter is found to be invalid, the remaining provisions of this chapter shall not be affected nor diminished thereby.

ROBERT M. BECK, JR., Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: July 20, 2010

FILED WITH LRC: July 20, 2010 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 29, 2010 at 10 a.m., in the clubhouse of The Red Mile, 1200 Red Mile Rd., Lexington, Kentucky 40504-2652. Individuals interested in being heard at this hearing shall notify the Kentucky

Horse Racing Commission in writing by September 22, 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 September 30, 2010. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Timothy A. West, Assistant General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation defines the terms that are used in the commission's administrative regulations.

(b) The necessity of this administrative regulation: The regulation is necessary to provide specific and updated definitions of terms used in the commission's administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which thoroughbred racing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating mutuel wagering on horse races under the pari-mutuel system of wagering.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which thoroughbred racing and pari-mutuel wagering thereon shall be conducted in the Commonwealth. This regulation provides specific and updated definitions for the terms used in the commission's administrative regulations.

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

(a) How the amendment will change this existing administrative regulation: The amendment modifies some existing definitions and adds new definitions to account for recent innovations in horse racing and pari-mutuel wagering.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to address innovations in horse racing and pari-mutuel wagering.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which horse racing and pari-mutuel wagering thereon shall be conducted in the Commonwealth. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating mutuel wagering on horse races under the pari-mutuel system of wagering. This regulation provides specific and updated definitions of terms used in the commission's administrative regulations.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation provides specific and updated definitions of terms used in the commission's administrative regulations.

(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 all persons and entities involved in horse racing and pari-mutuel wagering on horse racing 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: No actions are necessary.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will give greater guidance to participants in horse racing by providing specific and updated definitions of terms used in the commission's administrative regulations.

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

(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: N/A

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees have been established or increased as a result of this administrative regulation.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215, 230.260, 230.361, and 230.370.

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. This regulation will have no effect on the expenditures and revenues of any state or local 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? This regulation will have no effect on the expenditures and revenues of any state or local government agency.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will have no effect on the expenditures and revenues of any state or local government agency.

(c) How much will it cost to administer this program for the first year? There will be no administrative costs as a result of this regulation.

(d) How much will it cost to administer this program for subsequent years? There will be no administrative costs as a result of this regulation.

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

Revenues (+/-)

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (Amendment)

810 KAR 1:011. Pari-mutuel wagering.

RELATES TO: KRS 230.210-230.375, 230.990

STATUTORY AUTHORITY: KRS 230.215, 230.240, 230.260, 230.280, 230.290, 230.300, 230.310, 230.320, 230.361, 230.370[260.361]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) grants the commission the authority to regulate conditions under which thoroughbred racing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.361(1) requires the authority to promulgate administrative regulations governing and regulating mutuel wagering on horse races under the pari-mutuel system of wagering. This administrative regulation establishes the requirements for the operation of pari-mutuel wagering under KRS Chapter 230 and 810 KAR Chapter 1[KRS 230.361(4) requires the authority to promulgate administrative regulations governing mutuel wagering on horse races under the pari-mutuel system of wagering. This administrative regulation establishes the requirements for the operation of pari-mutuel wagering].

Section 1. Pari-Mutuel System of Wagering Required. (1) The only wagering permitted on a live or historical horse race shall be under the pari-mutuel system of wagering. All systems of wagering other than pari-mutuel shall be prohibited. Any person participating or attempting to participate in prohibited wagering shall be ejected and excluded from association grounds.

(2) Wagering conducted in conformity with KRS Chapter 230 and these administrative regulations is pari-mutuel.

Section 2. Totalizator or Other Approved Equipment Required.

(1) Pari-mutuel wagering on live and historical horse races shall only be conducted through the use of a totalizator or other similar mechanical equipment approved by the commission pursuant to KRS 230.361. The commission shall not require any particular make of equipment.

(2) The totalizator or other mechanical equipment shall be available for testing under the supervision of the commission upon request to ensure its proper working order.

Section 3. Wagering on an Historical Horse Race Authorized.

(1) Wagering on an historical horse race is hereby authorized and may be conducted in accordance with KRS Chapter 230 and 810 KAR Chapter 1.

(2) Wagering on an historical horse race shall only be conducted by:

(a) An association licensed to conduct a live horse race meet; or

(b) Two (2) or more associations licensed to conduct a live horse race meet who form a joint venture or otherwise pursuant to an agreement between them.

(3) Wagering on an historical horse race shall only be permitted in a designated area on the licensed premises of an association licensed to conduct a live horse race meeting. Wagering on historical horse racing shall not be offered in any other location.

(4) An association may conduct wagering on historical horse races of any horse breed regardless of the type of breed that primarily races in live meets conducted by the association. An association may conduct wagering on historical races on any days and hours approved by the commission, and shall not be limited to times during which the association is conducting a live horse race meeting.

(5) Any wager placed on an historical horse race is an exotic wager.

(6) Before offering wagering on an historical horse race, an association shall first obtain the commission's written approval of all wagers offered as set forth in 810 KAR 1:120.

(7) All wagering on an historical horse race shall incorporate the following elements:

(a) A patron may only wager on an historical horse race on a terminal approved by the commission;

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(b) An association shall at all times maintain at least two (2) terminals offering each type of exotic wager on an historical horse race;

(c) Once a patron deposits the wagered amount in the terminal offering wagering on an historical horse race, an historical horse race shall be chosen at random;

(d) Prior to the patron making his or her wager selections, the terminal shall not display any information that would allow the patron to identify the historical race on which he or she is wagering, including the location of the race, the date on which the race was run, the names of the horses in the race, or the names of the jockeys that rode the horses in the race;

(e) The terminal shall make available true and accurate past performance information on the historical horse race to the patron prior to making his or her wager selections. The information shall be current as of the day the historical horse race was actually run. The information provided to the patron shall be displayed on the terminal in data or graphical form; and

(f) After a patron finalizes his or her wager selections, the terminal shall display a video replay of the race, or a portion thereof, and the official results of the race. The identity of the race shall be revealed to the patron after the patron has placed his or her wager.

Section 4. Payouts Only Out of Pari-Mutuel Pools: Seed Pools Required. (1)(a) A wager on an historical horse race, less deductions permitted by KRS Chapter 230 or these administrative regulations, shall be placed in pari-mutuel pools approved by the commission.

(b) A payout to a winning patron shall be paid from money wagered by patrons and shall not constitute a wager against the association.

(c) An association conducting wagering on an historical horse race shall not conduct wagering in such a manner that patrons are wagering against the association, or in such a manner that the amount retained by the association as a commission is dependent upon the outcome of any particular race or the success of any particular wager.

(2) An association shall only pay a winning wager on an historical horse race out of the applicable pari-mutuel pool and shall not pay a winning wager out of the association's funds. In no event shall payment of a winning wager exceed the amount available in the applicable pari-mutuel pool.

(3) An association offering wagering on an historical horse race shall operate seed pools in a manner and method approved by the commission. For each wager made, an association may assign a percentage of the wager to seed pools. The seed pools shall be maintained and funded so that the amount available at any given time is sufficient to ensure that a patron will be paid the minimum amount required on a winning wager.

(4) An association shall provide the funding for the initial seed pool for each type of exotic wager. The funding for the initial seed pool shall be non-refundable and in an amount sufficient to ensure that a patron will be paid the minimum amount required on a winning wager.

Section 5. Location of Terminals Used for Wagering on an Historical Horse Race. (1) Terminals offering wagering on historical horse races shall be located within designated areas which have the prior written approval of the commission. Designated areas shall be established in such a way as to control access by the general public and prevent entry by any patron who is under eighteen (18) years of age or is otherwise not permitted to place wagers on an historical horse race.

(2) Each association shall be responsible for monitoring persons entering and leaving the designated areas and shall be responsible for preventing access to any patron who is under eighteen (18) years of age or is otherwise not permitted to place wagers on historical horse races.

(3) Each association shall provide terminals that are accessible to handicapped patrons.

Section 6. Records to be Maintained. (1) Each association and each simulcast facility authorized under KRS 230.380 shall main-

tain complete records of all pari-mutuel wagering transactions on live and historical horse races, including the amounts wagered at each betting window, self-service totalizator, mobile pari-mutuel teller, and terminal.

(2) A copy of the wagering records shall be retained and safeguarded for a period of not less than two (2) years and shall not be destroyed without the prior written permission of the commission.

Section 7. Equipment. (1) The association and the totalizator provider shall install a primary and secondary device, which activate the stop betting function of the totalizator system. The chief state steward, or his or her designee, shall use the primary device to stop wagering at the start of the race. In the event that wagering is not stopped by the primary device at the start of the race, the totalizator operator shall stop wagering using the secondary device. The secondary device shall be installed in the totalizator room and shall only be used by the totalizator operator.

(2) If there is a complete breakdown of the totalizator or mechanical equipment during the wagering on a live horse race, the wagering on that race shall be declared closed. If the totalizator remains capable of computing payouts, the payouts for that race shall be computed based on the amounts wagered prior to the breakdown. If the totalizator is incapable of computing payouts, then refunds shall be issued for all amounts wagered on that race.

(3) If there is a complete breakdown of a terminal offering wagering on an historical horse race, the association offering the wager shall make a full refund of the patron's balance on the terminal at the time of the breakdown.

Section 8. Entries in a Live Horse Race. (1) The chief state steward shall timely advise an association's pari-mutuel manager, prior to the beginning of wagering on each race, of the horses that will compete in the race.

(2) If two (2) or more horses entered for the same live horse race are determined by the commission to have common ties through ownership or training they may be joined by the commission as a mutuel entry. The mutuel entry shall become a single betting interest and a wager on one (1) horse in a mutuel entry shall be a wager on all horses in the same mutuel entry. If the number of horses competing in a live horse race exceeds the numbering capacity of the totalizator, the racing secretary shall assign the highest pari-mutuel numbers to horses so that the highest numbered horse within the numbering capacity of the totalizator together with horses of higher numbers, shall be grouped in the mutuel field as a single betting interest, and a wager on one (1) horse in the mutuel field shall be a wager on all horses in the same mutuel field.

(3) A refund at cost value shall be made to all holders of a purchased ticket bearing the number of a horse in any race that has been scratched or withdrawn before the horse has become a starter, unless the horse is part of a mutuel entry, and one (1) or more of the entry starts.

Section 9. Sale of Pari-Mutuel Tickets on Live Horse Races. (1) The following types of pari-mutuel wagering shall be permitted on a live horse race at all licensed associations and simulcast facilities:

(a) Normal win, place, and show wagers on each race;
(b) Any exotic wager previously approved by the commission; and

(c) Any new exotic wager approved in writing by the commission.

(2) Pari-mutuel tickets on live horse races shall not be sold except by a licensed association or a simulcast facility authorized by KRS 230.380.

(3) Pari-mutuel tickets on a live horse race shall only be sold at regular ticket windows, self-service totalizator machines, by mobile pari-mutuel tellers with hand-held totalizator devices, or by any other method approved in writing by the commission prior to being offered to the public. At least one (1) regular ticket window shall be made accessible to handicapped patrons.

(4)(a) Pari-mutuel stored value cards or cash vouchers may be offered by an association. The dollar amount on the stored value card or cash voucher may be redeemed at any time at any regular

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ticket window or used to fund additional wagers.

(b) Cash vouchers shall be valid for one (1) year after the date of issuance. Failure to present any cash voucher for redemption within one (1) year of issuance shall constitute a waiver of the right to receive payment thereon.

(5) No pari-mutuel wager shall be made on a race after the totalizator has been locked for that race.

(6) Any claim by a patron that he or she has been issued a pari-mutuel ticket other than that which was requested shall be made before the patron has left the ticket window or before the mobile teller has initiated a transaction with another patron. No claims for incorrect tickets will be honored after the totalizator has been locked.

Section 10. Payment on Pari-Mutuel Tickets on Live Horse Races. (1) At the end of each race, the placing judges shall advise the manager of the pari-mutuel department by the use of the totalizator equipment or by telephone of the official placement of the horses, and no payouts shall be made until the receipt of the notice.

(2) Payment of valid pari-mutuel tickets shall be made on the basis of the order of finish as declared "official" by the stewards. A subsequent change in the order of finish or award of purse money that may result from a subsequent ruling by the stewards or commission shall not affect the pari-mutuel payout.

(3) Each association shall deduct from each pari-mutuel pool a commission, not exceeding the commission provided by KRS 230.3615. The remainder of the pool after the deduction of the commission shall be the net pool for distribution as payouts to ticket holders.

(4) Payment on valid pari-mutuel tickets shall be made only if presented and surrendered within one (1) year following the running of the live horse race on which the wager was made. Failure to present any such ticket within one (1) year shall constitute a waiver of the right to receive payment thereon

(5) The association shall be responsible for the correctness of all payout prices posted as "official." If an error is made in posting the payout figures, and ascertained before any tickets are cashed thereon, the posting error shall be corrected, accompanied by a public address announcement, and only the correct amounts shall be used in the payout, irrespective of the initial error.

(6) A mutilated pari-mutuel ticket that is not easily identifiable as being a valid ticket shall not be accepted for payment.

(7) An association shall establish a written procedure for granting patrons an opportunity to file a claim on a lost pari-mutuel ticket and provide a copy to the commission.

(8) Prior to posting payouts, the association's pari-mutuel manager shall require the verification of the winning runners and prices prior to posting official results.

(9)(a) If an error is made in calculating the payout on a winning wager, resulting in overpayment, the association shall be responsible for the amount between the correct payout and the amount paid.

(b) If the error in calculation results in a payout being too low, the amount between the correct payout and the amount paid shall be added to the net pool of the same position in the following race on the same day or, if it is the last race of the day, then it shall be added to the net pool of the same position in the same race on the following day. If an error occurs in computing the daily double pool, the underpayment shall be added to the daily double pool of the following day.

(c) If an error occurs causing underpayment on the last race of the entire racing meeting, the amount of the underpayment shall be paid to the Kentucky Revenue Cabinet.

Section 11. Minimum Wagers and Payouts. (1) The minimum wager to be accepted by any licensed association on a live horse race shall be ten (10) cents. The minimum payout on a one (1) dollar wager on a live horse race shall be one (1) dollars and ten (10) cents, unless a minus pool occurs. If a minus pool occurs, the minimum payout for a one (1) dollar wager shall be one (1) dollar and five (5) cents.

(2) The minimum wager to be accepted by any licensed association on an historical horse race shall be ten (10) cents. The

minimum payout on any wager shall not be less than the amount wagered.

Section 12. Minors Prohibited from Wagering. A minor shall not be permitted by any licensed association or simulcast facility to purchase or cash a pari-mutuel ticket.

Section 13. Odds and payouts posted. (1) Approximate odds for live horse races, based on win pool betting for finishing first for each betting interest, shall be posted on one (1) or more boards or television screens within view of the wagering public at intervals of not more than ninety (90) seconds.

(2) If daily double wagering is conducted on a live horse race, before off-time of the second daily double race, the probable payout for each two (2) dollar daily double wager combining the winner of the first daily double race with every horse or betting interest in the second daily double race shall be posted; except that if a dead heat for first in the first daily double race occurs, or a scheduled starter in the second daily double race is excused so as to cause a consolation daily double pool, then posting of all possible payouts shall not be mandatory, but the association shall make every effort to compute such daily double prices and advise the public by posting or public address announcement as soon as possible and prior to the running of the second daily double race.

(3) For wagering on an historical horse race, approximate odds or payouts for each wagering pool shall be posted on each terminal for viewing by patrons at intervals of no more than ninety (90) seconds.

Section 14. Betting Explanation. (1) Each association shall publish in the daily race program, for each day of live horse racing, a general explanation of pari-mutuel wagering offered on live horse races and an explanation of each type of betting pool offered. The explanation also shall be posted in conspicuous places about the association grounds to adequately inform the public and shall be submitted to the commission prior to publication for approval.

(2) Each association shall post, in conspicuous places in the designated area, a general explanation of pari-mutuel wagering offered on historical horse races and an explanation of each betting pool offered. The explanation shall be submitted to the commission for approval prior to its posting.

Section 15. Prior Approval Required for Number of Live Horse Races. Each association desiring to conduct more than nine (9) live horse races on a single day shall first apply in writing to the commission and obtain specific approval of the number of live horse races to be offered on a single day.

Section 16. Pools Dependent upon Entries for Live Horse Races. (1) If horses representing five (5) or fewer betting interests qualify to start in a live horse race, the association may prohibit show wagering on that race. If horses representing four (4) or fewer betting interests qualify to start in a live horse race, the association may prohibit both place and show wagering on that race.

(2) If a horse is scratched by the stewards after wagering has commenced or a horse is prevented from running in a live horse race because of failure of a starting-gate door to open properly, and the number of actual starters representing different betting interests is:

(a) Reduced to five (5), the association may cancel show wagering on that race and the entire show pool shall be refunded upon presentation and surrender of show tickets; or

(b) Reduced to four (4) or fewer, the association may cancel both place and show wagering on that race and the entire place and show pool shall be refunded upon presentation and surrender of place and show tickets.

Section 17. Emergency Situation. If any emergency arises in connection with the operation of the pari-mutuel department not provided for by this administrative regulation, the pari-mutuel manager shall take immediate corrective action and shall by the quickest means possible notify the chief state steward and render a full report to the commission.

Section 18. Severability. In the event that any provision or administrative regulation of this chapter is found to be invalid, the remaining provisions of this chapter shall not be affected nor diminished thereby. (Section 1. Pari-mutuel System of Wagering Required. Permitted wagering shall be under the pari-mutuel system, employing an electric totalizator or other mechanical equipment approved by the authority pursuant to KRS 230.361(1). All systems of wagering other than pari-mutuel, including but not limited to bookmaking and auction pool selling, shall be prohibited. Any person participating or attempting to participate in prohibited wagering shall be excluded from association grounds.

Section 2. Totalizator Required. Each association shall install and operate during its race meeting an electric totalizator or other mechanical equipment approved by the authority pursuant to KRS 230.361(1). The totalizator or other mechanical equipment shall be tested daily under the supervision of the authority to insure its proper working order.

Section 3. Records to be Maintained. The pari-mutuel manager shall maintain complete records of all wagering so the authority may upon review ascertain for any race: the opening line and subsequent odds fluctuations, and the amount, and at which window, wagers were placed on any betting interest. A copy of the wagering records shall be retained by each association and safeguarded for a period not less than two (2) years and shall not be destroyed without permission of the authority.

Section 4. Calculation and Distribution of Pools. The only pari-mutuel wagering pools permitted in this state shall be for win, place, show, daily double, exacta, and quinella, and other exotic wagering approved by the authority as provided by Section 9 of this administrative regulation; each shall have separate and independent calculation and distribution. From each pool there shall be deducted by each association the commission as provided by KRS 230.3615, with the remainder being the net pool for distribution as payoffs to ticket holders. Each association shall present the specific procedures to be used for each type of wagering in their application for dates. Any further changes or additions shall be submitted in writing to the authority for approval.

(1) Refunds. For each type of wagering, the association shall provide the procedures for refunds in writing to the authority at the time the request for the pool is made and the authority shall approve the procedures before implementation.

(2) Race cancelled. For each type of wagering involving more than one (1) race, the association shall submit for authority approval the procedures to be used if a race is cancelled.

(3) Totalizator breakdown. If there is an irreparable breakdown of the totalizator or mechanical equipment during the wagering on a race, the wagering on that race shall be declared closed and the payoff shall be computed on the sums wagered in each pool up to the time of the breakdown.

Section 5. Minimum Wager and Payoff. The minimum wager to be accepted by any licensed association shall be one (1) dollar. The minimum payoff on a two (2) dollar wager shall be two (2) dollars and twenty (20) cents unless a minus pool occurs. If a minus pool occurs, the minimum payoff for a two (2) dollar wager shall be two (2) dollars and ten (10) cents.

Section 6. Minors Prohibited from Wagering. A minor shall not be permitted by any licensed association to purchase or cash a pari-mutuel ticket.

Section 7. Odds or Payoffs Posted. Approximate odds, based on win pool betting for finishing first for each betting interest, shall be posted on one (1) or more boards or television screens within view of the wagering public, at intervals of not more than ninety (90) seconds. If daily double wagering is conducted, before off time of the second daily double race, the possible payoff for each two (2) dollar daily double wager combining the winner of the first daily double race with every horse or betting interest in the second daily double race shall be posted; except that if a dead heat for first in the first daily double race occurs, or a scheduled starter in the second daily double race is excused so as to cause a consolation daily double pool, then posting of all possible payoffs shall not be mandatory, but the association shall make every effort to compute such daily double prices and advise the public by posting or public-address announcement as soon as possible and prior to the running of the second daily double race.

Section 8. Betting Explanation. Each association shall publish in the daily race program a general explanation of pari-mutuel betting and an explanation of each type of betting pool offered. The explanation also shall be posted in conspicuous places about the association grounds to adequately inform the public and shall be submitted to the authority prior to publication for approval.

Section 9. Prior Approval Required for Betting Pools. Each association desiring to conduct more than nine (9) betting races on a single day, or desiring to offer exotic wagering, shall first apply in writing to the authority and obtain specific approval of the number of betting races and type of wagering to be offered on a single day.

Section 10. Pools Dependent Upon Entries. (1) On each type of wagering not already described in subsections (2) and (3) of this section, the association shall request in writing the procedures for each pool as a function of entries and the authority shall make the final determination.

(2) If horses representing five (5) or fewer betting interests qualify to start in a race, the association may prohibit show wagering on that race. If horses representing four (4) or fewer betting interests qualify to start in a race, the association may prohibit both place and show wagering on that race.

(3) If a horse is excused by the stewards after wagering has commenced or a horse is prevented from racing because of failure of a starting gate door to open properly, and the number of actual starters representing different betting interests is:

(a) Reduced to five (5), the association may cancel show wagering on that race and the entire show pool shall be refunded upon presentation and surrender of show tickets; or

(b) Reduced to four (4) or fewer, the association may cancel both place and show wagering on that race and the entire place and show pool shall be refunded upon presentation and surrender of place and show tickets.

Section 11. Pari-mutuel Ticket Sales. (1) Pari-mutuel tickets shall not be sold except by a licensed association. Pari-mutuel tickets shall be sold only at regular windows properly designated by signs showing the type and denomination of tickets to be sold at the windows. A pari-mutuel ticket shall not be sold after the totalizator has been locked and an association shall not be responsible for ticket sales entered into but not completed by issuance of a ticket before the totalizator has been locked.

(2) Any claim by a person that he has been issued a ticket other than that which he requested, shall be made before he leaves the window and before the totalizator is locked.

(3) After purchasing a ticket and after leaving the ticket window, a person shall not be entitled to enter for the issuance of an incorrect ticket, or to claim a refund or payment for tickets discarded, or lost, or destroyed, or mutilated beyond identification.

(4) Payment on valid pari-mutuel tickets shall be made only if presented and surrendered to the association where the wager was made within one (1) year following the running of the race on which the wager was made. Failure to present any such ticket within one (1) year shall constitute a waiver of the right to receive payment thereon.

(5) Payment of valid pari-mutuel tickets shall be made on the basis of the order of finish as posted on the infield results board and declared "official" by the stewards. A subsequent change in the order of finish or award of purse money that may result from a subsequent ruling by the steward or authority, shall not affect the pari-mutuel payoff.

(6) The association shall be responsible for the correctness of all payoff prices posted as "official" on the infield results board. If an error is made in posting the payoff figures on the public board, and ascertained before any tickets are cashed thereon, the posting error shall be corrected, accompanied by a public address announcement, and only the correct amounts shall be used in the payoff, irrespective of the initial error on the public board.

(7) Prior to posting payoffs, the pari-mutuel manager shall require each of the computer printout sheets or calculating sheets of the race to be proven by the computer or calculator and the winners verified. Such proof shall show the amounts for authority, breakage, and payoffs, which added together shall equal the total pool. All pay slips shall be checked with computer printout sheets or calculating sheets as to winners and prices before being issued to cashiers, and all board prices shall be rechecked with the com-

puter printout sheet or calculator before released to the public.

~~(8) If the recapitulation of the sales registered by each ticket issuing machine subsequently proves that the actual amount in the pool, or pools, is less than the amount used in calculating the payoff, the deficiency shall be deposited in the pool or pools by the association. If the recapitulation of sales prove that the actual amount in the pool or pools, is greater than the amount used in calculating the payoff due to a mechanical error of the totalizer, the error resulting in underpayment to the public, then the aggregate of the underpayments shall be paid into the corresponding pool of the next race or races, in an amount as may be determined by the state steward and the pari-mutuel manager. If an error should occur in computing the daily double pool, the underpayment shall be added to the daily double pool of the following day. Overpayments and underpayments subsequently discovered upon recapitulation after the close of a meeting may be adjusted, and any underpayment resulting from the final adjustment shall be paid to the Department of Revenue.~~

~~Section 12. Betting Interests Involving more than One (1) Horse. If two (2) or more horses entered for the same race are determined by the authority to have common ties through ownership and are joined by the authority as a "mutuel entry," the mutuel entry shall become a single betting interest and a wager on one (1) horse in a mutuel entry shall be a wager on all horses in the same mutuel entry. If the number of horses competing in a race exceeds the numbering capacity of the totalizer, the racing secretary shall assign the highest pari-mutuel numbers to horses so that the highest numbered horse within the numbering capacity of the totalizer, together with horses of higher numbers, shall be grouped in the "mutuel field" as a single betting interest, and a wager on one (1) horse in the mutuel field shall be a wager on all horses in the same mutuel field.~~

~~Section 13. Emergency Situation. If any emergency arises in connection with the operation of the pari-mutuel department not provided for by this administrative regulation, the pari-mutuel manager shall make an immediate decision and shall by the quickest means possible notify the state steward and render a full report to the authority.]~~

ROBERT M. BECK, JR., Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: July 20, 2010

FILED WITH LRC: July 20, 2010 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 29, 2010 at 10 a.m., in the clubhouse of The Red Mile, 1200 Red Mile Rd., Lexington, Kentucky 40504-2652. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by September 22, 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 September 30, 2010. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Timothy A. West, Assistant General Counsel

(I) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the regulatory framework that applies to all pari-mutuel wagering on live and historical horse races in the commonwealth. It authorizes pari-mutuel wagering on historical horse races and

requires the use of seed pools for such wagers. It establishes where, and under what circumstances, pari-mutuel wagering on live and historical horse races may take place. It places requirements on how winning pari-mutuel wagers shall be paid. It requires associations to maintain records regarding all pari-mutuel wagering at their facilities and to make them available to the commission on request. It establishes guidelines for the equipment used by the association to offer pari-mutuel wagering and provides requirements for the sale of pari-mutuel tickets. It establishes minimum wagers and payouts for pari-mutuel wagers on live and historical horse races.

(b) The necessity of this administrative regulation: This regulation is necessary for the commission to regulate the integrity of pari-mutuel wagering in the commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which thoroughbred racing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating mutuel wagering on horse races under the pari-mutuel system of wagering. This regulation establishes the regulatory framework that applies to all pari-mutuel wagering on live and historical horse races in the commonwealth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which thoroughbred racing and pari-mutuel wagering thereon shall be conducted in the commonwealth. This regulation provides the specific rules for pari-mutuel wagering on live and historical horse races in the commonwealth.

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

(a) How the amendment will change this existing administrative regulation: The existing regulation required updating to address certain innovations in pari-mutuel wagering. This amendment takes those innovations into account and incorporates them into the commission's regulatory framework. The amendment also addresses certain inconsistencies between the pari-mutuel regulations that govern thoroughbred, standardbred, and quarter horse/appaloosa/arabian racing (810 KAR 1:011, 811 KAR 1:125, and 811 KAR 2:060, respectively). To the extent possible, the amendment brings uniformity to the rules governing pari-mutuel wagering for the various breeds.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to address innovations in the way pari-mutuel wagering is offered and to bring uniformity among pari-mutuel wagering for thoroughbred, standardbred, and quarter horse/ appaloosa/arabian racing. The amendment is also necessary to establish guidelines governing pari-mutuel wagering on historical horse races.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which horse racing and pari-mutuel wagering thereon shall be conducted in the commonwealth. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating mutuel wagering on horse races under the pari-mutuel system of wagering. This amendment sets forth the requirements that apply to all pari-mutuel wagering on live and historical horse races in the commonwealth.

(d) How the amendment will assist in the effective administration of the statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which thoroughbred racing and pari-mutuel wagering thereon shall be conducted in the commonwealth. This amendment provides the specific rules for pari-mutuel wagering on live and historical horse races in the commonwealth.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the eight currently-licensed racing associations in the commonwealth, any applicant for the final racing association license, the owners and trainers who participate in racing in the commonwealth, the jockeys who ride in the commonwealth, the patrons who place pari-mutuel

wagers on live and historical horse races in the commonwealth, and the commission.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The licensed racing associations will be required to follow the procedure outlined in the regulation to offer any exotic wager that has not been previously approved by the commission. If an association requests and is granted permission by the commission to offer pari-mutuel wagering on historical horse races, then the association will be required to conduct such pari-mutuel wagering in a designated area (as defined in 810 KAR 1:001). The associations that offer pari-mutuel wagering on historical horse races will also be required to enter into an agreement with the Horsemen's Benevolent and Protective Association or the Kentucky Thoroughbred Owners and Breeders Association, Inc. regarding the allocation of the takeout between the association and the horsemen and file a memorandum with the commission outlining the terms 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): If an association requests and receives permission to offer pari-mutuel wagering on historical horse races, then the association will incur costs constructing or renovating a designated area (as defined in 810 KAR 1:001) to house the terminals. An association will also incur costs purchasing or leasing commission-approved terminals and hiring additional employees to staff the designated area and maintain the terminals. Any association offering pari-mutuel wagering on historical horse races will also be required to reimburse the commission pursuant to KRS 230.240 to cover the commission's increased regulatory costs relating to compensation of additional personnel and other expenses.

The total increase in the commission's regulatory costs will be based upon the number of associations that offer pari-mutuel wagering on historical horse races and the number of terminals at each association. The increased costs will likely include the addition of new employees and equipment. There will be no additional costs to owners, trainers, jockeys, or patrons placing pari-mutuel wagers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The associations will be able to offer increased pari-mutuel wagering options to patrons and can expect an increase in on-track attendance and total pari-mutuel handle. The increased revenue can be used to maintain and improve racing association facilities and supplement purses for live races run at each association. The increased purses will help the associations to compete with racing associations in neighboring states that offer expanded gaming options. The owners, trainers, and jockeys will benefit from increased purses, as well as any improvements to an association's facilities. The patrons will benefit from any improvements to an association's facilities as well as from increased pari-mutuel wagering options.

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

(a) Initially: See answer to question 4(b).

(b) On a continuing basis: With respect to pari-mutuel wagering on historical horse races, the commission anticipates that the first year such wagering is offered will see the greatest increase in regulatory costs. Thereafter, the commission expects the continuing costs to be mainly for employee compensation and expenses and equipment maintenance. The commission will be reimbursed by the associations for additional employee compensation and other expenses pursuant to KRS 230.240.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The commission will be reimbursed by the associations for additional employee compensation and other expenses pursuant to KRS 230.240.

(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 associa-

tions that request and receive permission to offer pari-mutuel wagering on historical horse races will be required to reimburse the commission for the cost of compensation of additional employees and other expenses pursuant to KRS 230.240.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The associations that request and receive permission to offer pari-mutuel wagering on historical horse races will be required to reimburse the commission for the cost of compensation of additional employees and expenses pursuant to KRS 230.240.

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to each association.

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 and the Department of Revenue.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215, 230.240, 230.260, 230.280, 230.290, 230.300, 230.310, 230.320, 230.361, and 230.370.

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. The commission anticipates that its regulatory costs will increase based upon the associations offering pari-mutuel wagering on historical horse races. The increased costs will likely include the addition of new employees and equipment. The total increase will be based upon the number of associations that offer pari-mutuel wagering on historical horse races and the number of terminals at each association. The associations that offer pari-mutuel wagering on historical horse races will be required to reimburse the commission the costs associated with compensation of employees and other expenses pursuant to KRS 230.240. The Department of Revenue may have an increase in collection duties, but they are minimal and can be absorbed by the department.

(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 amount of tax revenue generated is dependent upon the number of terminals the associations install and operate. While that number is unknown at this time, it is estimated that annual tax revenue will be somewhat less than \$1,000 per terminal.

(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? Based upon the experience of Oaklawn Park, the commission anticipates that revenue will more than double from the first to the second year, and more than triple from the second to the third year.

(c) How much will it cost to administer this program for the first year? The increased regulatory costs of the commission will be based upon the number of associations that offer pari-mutuel wagering on historical horse races and the number of terminals installed at each association.

(d) How much will it cost to administer this program for subsequent years? In subsequent years, the commission anticipates the costs largely to come from employee compensation and expenses and equipment maintenance. The commission will be reimbursed for these costs by the associations.

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)**

811 KAR 1:005. Definitions.

RELATES TO: KRS Chapter 230 [~~230.210, 230.215, 230.260(1)~~]

STATUTORY AUTHORITY: KRS 230.215(2), 230.225(7), 230.260(3), 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) grants the commission the authority to regulate conditions under which standardbred racing shall be conducted in Kentucky. KRS 230.260(8) grants the commission the authority to prescribe necessary and reasonable administrative regulations and conditions under which horse racing at a horse race meeting shall be conducted in this state. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating mutual wagering on horse races under the pari-mutuel system of wagering. [~~and 230.260(3) authorize the Authority to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky.~~] This administrative regulation defines the terms used in 811 KAR[.] Chapter 1.

Section 1. Definitions. (1) "Added money" means the amount of money, exclusive of trophy, added into a stakes by an association, a sponsor, a state-bred program, or other fund, and which is in addition to those monies gathered by nomination, entry, sustaining and other fees paid by the horsemen.

(2) "Age" means the number of years since a horse was foaled, reckoned as if the horse was foaled in January 1 of the year in which the horse was foaled.

(3) "Also eligible" means:

(a) An eligible horse, properly entered, which is not drawn for inclusion in a race, but which becomes eligible according to preference or lot if another horse is scratched prior to the scratch time deadline; or

(b) The next preferred nonqualifier for the finals, or consolation from a set of elimination trials, which becomes eligible in the event a finalist is scratched by the judges for a rule violation or is otherwise eligible if written race conditions permit.

(4) "Appeal" means a request for the commission [~~Authority~~] to investigate, consider, and review any decision or ruling of a judge or official of a meeting to deal with placings, penalties, interpretations of the rules, or other questions dealing with the conduct of a race.

(5) "ARCI" means the Association of Racing Commissioners International.

(6) "Arrears" means all sums due by a licensee as reflected by his or her account with the horseman's bookkeeper, including subscriptions, driver fees, forfeitures, and any default incident to 811 KAR Chapter 1.

(7) "Association" is defined by KRS 230.210(1).

(8) "Authority" is defined by KRS 230.210(2).

(9) "Bleeder" means a horse known to have bled internally or from its nostrils during a workout or race.

(10) "Bleeder list" means a tabulation of all bleeders to be maintained by the commission [~~Authority~~].

(11) "Breakage" means the net pool minus payout.

(12) "Breeder" means the owner of the dam of a horse at the time the horse was conceived.

(13) "Calendar days" means consecutive days counted irrespective of number of racing days.

(14) "Carryover" means nondistributed pool monies which are retained and added to a corresponding pool in accordance with 811 KAR Chapter 1.

(15) [(44)] "Claiming race" means a race in which ownership of a horse participating in the race may be transferred in conformity with 811 KAR 1:035.

(16) [(45)] "Classified race" means a race in which entries are selected by the racing secretary on the basis of ability or past performance.

(17) [(46)] "Coggins test" means a medical procedure used to determine if a horse is positive for Equine Infectious Anemia.

(18) "Commission" means the Kentucky Horse Racing Commission (formerly known as the Kentucky Horse Racing Authority and defined in KRS 230.210(2)) when used in the context of the administrative agency governing horse racing and pari-mutuel wagering. When used in the context of pari-mutuel wagering, it means the amount an association is authorized to withhold from a pari-mutuel wager pursuant to KRS 230.750.

(19) [(47)] "Conditioned race" means an overnight race in which eligibility is determined according to specified conditions, which may include the following:

- (a) Age;
- (b) Sex;
- (c) Earnings;
- (d) Number of starts; or
- (e) Positions of finishes.

(20) [(48)] "Conditions" means qualifications that determine a horse's eligibility to be entered in a race.

(21) [(49)] "Coupled entry" means two (2) or more horses in a race that are treated as a single betting interest for pari-mutuel wagering purposes [~~(also see "entry")~~].

(22) [(20)] "Dash" [~~and in which~~] means a race in a single trial or in a series of two (2) or three (3) races governed by one (1) entry fee for the series, in which a horse shall start in all dashes with positions drawn for each dash and the number of purse distributions or payouts awarded shall not exceed the number of starters in the dash.

(23) [(24)] "Day" means a twenty-four (24) hour period beginning at 12:01 a.m. and ending at midnight [~~(also known as a calendar day)~~].

(24) [(22)] "Dead heat" means a finish of a race in which the noses of two (2) or more horses reach the finish line at the same time.

(25) [(23)] "Declaration" means the naming of a particular horse as a starter in a particular race.

(26) "Designated area" means any enclosed area that the commission has approved for the location of terminals used for wagering on an historical horse race.

(27) [(24)] "Disqualification" means that [a]:

- (a) ~~An individual~~ [~~Person~~] shall not be allowed to start or drive a horse in a race; or
- (b) ~~A~~ horse shall not be allowed to start in a race.

(28) [(25)] "Draw" means the process of assigning post positions and the process of selecting horses in a manner to ensure compliance with the requirements governing racing.

(29) [(26)] "Driver" means a person who is licensed to drive a horse in a race.

(30) [(27)] "Early closing race" means a race for a definite amount of money in which entries close at least six (6) weeks prior to the race.

(31) [(28)] "Electronic ability" means a computer-generated eligibility certificate that records a horse's racing statistics.

(32) [(29)] "Elimination heat" means an individual heat of a race in which the contestants shall qualify for a final heat.

(33) [(30)] "Entry" means the act of nominating a horse for a race.

(34) [(34)] "Exhibition race" means a race on which no pari-mutuel wagering is permitted.

(35) "Exotic wager" means any pari-mutuel wager placed on a live or historical horse race other than a win, place, or show wager placed on a live horse race.

(36) [(32)] "Extended pari-mutuel meeting" means a meeting or series of meeting, at which no agriculture fair is in progress, with an annual total of more than six (6) days duration and during [~~in~~] which pari-mutuel wagering is permitted.

(37) [(33)] "Field" or "mutuel field" means a single betting interest involving more than one (1) horse which is not a mutuel entry [~~formed when the number of horses in a race exceeds the numbering capacity of the totalizer, and the highest numbered horse within the numbering capacity of the totalizer and horses of a higher number are grouped in the mutuel field~~].

(38) [(34)] "Forfeit" means money due from a licensee because of error, fault, neglect of duty, breach of contract, or a penalty imposed by the judges or the commission [~~Authority~~].

(39) "Futurity" means a stake in which the dam of the compet-

ing animal is nominated either when in foal or during the year of foaling.

(40)(35) "Handicap" means a race in which allowances are made according to a horse's:

- (a) Age;
- (b) Sex;
- (c) Claiming price; or
- (d) Performance.

(41)(36) "Handle" means the aggregate of all pari-mutuel pools, excluding refundable wagers.

(42) "Historical horse race" means any horse race that was previously run at a licensed pari-mutuel facility located in the United States and that concluded with official results. An historical horse race must have concluded without scratches, disqualifications, or dead-heat finishes.

(43)(37) "Horse" means any equine (including and designated as a mare, filly, stallion, colt, ridgeling, or gelding) registered for racing.

(44)(38) "In harness" means that the performance shall be to a sulky.

(45) "Initial seed pool" means a nonrefundable pool of money funded by an association in an amount sufficient to ensure that a patron will be paid the minimum amount required on a winning wager on an historical horse race.

(46)(39) "Inquiry" means an investigation by the judges of a contest prior to declaring the result of the contest official.

(47) "Judge" [(40) Judges] means a duly appointed racing official [officials] with powers and duties specified in 811 KAR 1:015[-] serving at a current meeting in the [this] Commonwealth.

(48)(44) "Late closing race" means a race for a fixed amount of money in which entries close less than [that] six (6) weeks but not more than three (3) days before the race is to be contested.

(49) "Licensed premises" means the location and physical plant described in response to question P of the "Commonwealth of Kentucky Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, and Pari-Mutuel Wagering" filed for racing to be conducted in 2010. Licensed premises may also include real property of an association, if the association receives approval from the commission for a new location at which live racing will be conducted.

(50)(42) "Licensee" means an individual, firm, association, partnership, corporation, trustee, or legal representative that has been duly issued a currently valid license to participate in racing in the Commonwealth, licensed to conduct or participate in harness racing under the provisions of the Kentucky Revised Statutes.

(51)(43) "Maiden" means a horse that has never won a heat or race at the gait at which it was entered, and for which a purse is offered.

(52)(44) "Maiden race" means a race restricted to maidens.

(53)(45) "Match race" means a race between two (2) [or more] horses under conditions agreed upon between the contestants.

(54)(46) "Matinee race" means a race in which no entrance fee is charged and in which the payouts, if any, are not money.

(55) "Meeting" means the entire period of consecutive days, exclusive of dark days, granted by the commission to a licensed association for the conduct of live horse racing. A meeting shall begin at 10 a.m. of the first racing day and extend through a period ending one (1) hour after the last scheduled race of the last day.

(56) "Minus pool" means a pari-mutuel pool in which the amount of money to be distributed on winning wagers exceeds the amount of money contained in [(47) "Minus pool" means the amount of money to be distributed on winning wagers exceeds the amount of money comprising] the net pool.

(57)(48) "Month" means a calendar month.

(58)(49) "Net pool" means the total amount wagered less refundable wagers and takeout [amount of gross ticket sales less refundable wagers and statutory commissions and taxes].

(59)(60) "Nomination" means the naming of a horse to a certain race or series of races, generally accompanied by payment of a prescribed fee.

(60)(64) "Objection" means a verbal claim of foul in a race lodged by the horses driver, trainer, or owner before the race is declared official.

(61)(52) "Official order of finish" means the order of finish of the horses in a contest as declared official by the judges.

(62)(53) "Official time" means the elapsed time from the moment the first horse crosses the timing beam until the first horse crosses the finish line.

(63)(54) "Optional claiming race" means a contest restricted to horses entered to be claimed for a stated claiming price, and to horses which have started previously for that claiming price or less.

(64)(55) "Overnight race" means a contest for which entries close at a time set by the commission [Authority].

(65) "Pari-mutuel wagering", "mutuel wagering", or "pari-mutuel system of wagering" each means a system or method of wagering approved by the commission in which patrons are wagering among themselves and not against the association and amounts wagered are placed in one or more designated wagering pools and the net pool is returned to the winning patrons.

(66) "Patron" means an individual present at a track or a simulcast facility who observes or wagers on a live or historical horse race.

(67) "Payout" means the amount of the net pool payable to an individual patron on his or her winning wager. [(66) "Pari-mutuel wagering" means a system of wagering in which those persons who wager on horses that finish in specified positions share the total amount wagered, minus deductions permitted by law.]

(68)(57) "Payoff" or "payout" means the amount of money payable to winning wagers.

(69)(58) "Post position" means the preassigned position from which a horse will leave the starting gate.

(69)(59) "Post time" means the scheduled starting time for a race.

(70)(60) "Protest" means a written objection charging that a horse is ineligible to race, alleging improper entry procedures, or citing any act of an owner, trainer, driver, or official prohibited by rules, which, if true, shall exclude that horse or driver from racing.

(71)(64) "Purse" means the total cash awarded as a prize in a race.

(72) "Race day" means any period of twenty-four (24) hours beginning at 12:01 a.m. and ending at midnight on which live racing is conducted by an association.

(73) "Result" means the part of the official order of finish in a race used to determine the pari-mutuel payoff of pools.

(74)(62) "Scratch" means the act of withdrawing an entered horse from a race after the closing of entries.

(75)(63) "Scratch time" means the deadline set for withdrawal of entries from a scheduled race.

(76) "Seed pool" means a pool of money funded by patrons wagering on an historical horse race that is used to ensure that all patrons are paid the minimum payout on winning wagers.

(77)(64) "Simulcasting" is defined by KRS 230.210(1).

(78)(66) "Single price pool" means an equal distribution of profit to winning betting interests or winning betting combinations through a single payout price.

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

(80)(66) "Stable name" means a name used other than the actual legal name of an owner or lessee and registered with the United States Trotting Association.

(81)(67) "Stake" means a race which will be contested in a year subsequent to its closing in which the money given by the association conducting the race is added to the money contributed by the nominators, all of which except deductions for breeders or nominator's awards belongs to winner or winners, and in which, except as provided in 811 KAR 1:040, Section 6, all of the money contributed by the nominators belongs to the winner or winners.

(82)(68) "Starter" means a horse which becomes an actual contestant in a race by virtue of the starting gate opening in front of it upon dispatch by the official starter.

(83)(69) "Sulky" means a dual-wheel racing vehicle with dual shafts not exceeding the height of the horse's withers.

(84)(70) "Takeout" means the total amount of money, excluding breakage and any amounts allocated to a seed pool, withheld from each pari-mutuel pool, as authorized by KRS 230.750 and [Chapter 230 or] 811 KAR Chapter 1

(85) "Terminal" means any self-service totalizator machine or

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other mechanical equipment used by a patron to place a pari-mutuel wager on a live or historical horse race.

(86) "Totalizator" means the system, including hardware, software, communications equipment, and electronic devices that accepts and processes the cashing of wagers, calculates the odds and prices of such wagers, and records, displays, and stores pari-mutuel wagering information.

(87)(74) "Totalizator" means the system used for recording, calculating, and disseminating information about ticket sales, wagers odds, and payoff prices to patrons at a pari-mutuel wagering facility.

(72) "Touting" means the act of soliciting anything of value in exchange for information regarding the outcome of a horse race on which wagers are made at a wagering facility under the jurisdiction of the commission[Authority].

(88)(73) "USTA" means the United States Trotting Association.

(89)(74) "Walkover" means a race in which only one (1) horse starts or in which all the starters are owned by the same interest.

Section 2. Severability. In the event that any provision or administrative regulation of this chapter is found to be invalid, the remaining provisions of this chapter shall not be affected nor diminished thereby.

ROBERT M. BECK, JR., Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: July 20, 2010

FILED WITH LRC: July 20, 2010 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 29, 2010 at 10 a.m., in the clubhouse of The Red Mile, 1200 Red Mile Rd., Lexington, Kentucky 40504-2652. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by September 22, 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 September 30, 2010. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Timothy A. West

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation defines the terms that are used in the commission's administrative regulations.

(b) The necessity of this administrative regulation: The regulation is necessary to provide specific and updated definitions of terms used in the commission's administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which thoroughbred racing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating mutuel wagering on horse races under the pari-mutuel system of wagering.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which thoroughbred racing and pari-mutuel wagering thereon shall be conducted in the Commonwealth. This regulation

provides specific and updated definitions for the terms used in the commission's administrative regulations.

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

(a) How the amendment will change this existing administrative regulation: The amendment modifies some existing definitions and adds new definitions to account for recent innovations in horse racing and pari-mutuel wagering.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to address innovations in horse racing and pari-mutuel wagering.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which horse racing and pari-mutuel wagering thereon shall be conducted in the Commonwealth. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating mutuel wagering on horse races under the pari-mutuel system of wagering. This regulation provides specific and updated definitions of terms used in the commission's administrative regulations.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation provides specific and updated definitions of terms used in the commission's administrative regulations.

(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 all persons and entities involved in horse racing and pari-mutuel wagering on horse racing 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: No actions are necessary.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will give greater guidance to participants in horse racing by providing specific and updated definitions of terms used in the commission's administrative regulations.

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

(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: N/A

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees have been established or increased as a result of this administrative regulation.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215, 230.260, 230.361, 230.370.

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. This regulation will have no effect on the expenditures and revenues of any state or local 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? This regulation will have no effect on the expenditures and revenues of any state or local government agency.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will have no effect on the expenditures and revenues of any state or local government agency.

(c) How much will it cost to administer this program for the first year? There will be no administrative costs as a result of this regulation.

(d) How much will it cost to administer this program for subsequent years? There will be no administrative costs as a result of this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amendment)**

811 KAR 1:125. Pari-mutuel rules.

RELATES TO: KRS 230.210-230.375, 230.990[230.240, 230.245, 230.260(1), (2), 230.361(1), (2), (3), 230.990]

STATUTORY AUTHORITY: KRS 230.215, 230.240, 230.260, 230.280, 230.290, 230.300, 230.310, 230.320, 230.361, 230.370[230.260(3), (6), 230.361(4), (2)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) grants the commission the authority to regulate conditions under which standardbred racing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.361(1) requires the authority to promulgate administrative regulations governing and regulating mutuel wagering on horse races under the pari-mutuel system of wagering. This administrative regulation establishes the requirements for the operation of pari-mutuel wagering under KRS Chapter 230 and 811 KAR Chapter 1. [KRS 230.361(4) requires the commission to promulgate administrative regulations governing mutuel wagering under the pari-mutuel system of wagering. This administrative regulation establishes the requirement for pari-mutuel wagering at race meetings.]

Section 1. Pari-Mutuel System of Wagering Required. (1) The only wagering permitted on a live or historical horse race shall be under the pari-mutuel system of wagering. All systems of wagering other than pari-mutuel shall be prohibited. Any person participating or attempting to participate in prohibited wagering shall be ejected and excluded from association grounds.

(2) Wagering conducted in conformity with KRS Chapter 230 and 811 KAR Chapter 1 is pari-mutuel.

Section 2. Totalizator or Other Approved Equipment Required. (1) Pari-mutuel wagering on live and historical horse races shall only be conducted through the use of a totalizator or other similar mechanical equipment approved by the commission pursuant to KRS 230.361. The commission shall not require any particular make of equipment.

(2) The totalizator or other mechanical equipment shall be available for testing under the supervision of the commission upon request to ensure its proper working order.

Section 3. Wagering on an Historical Horse Race Authorized.

(1) Wagering on an historical horse race is hereby authorized and may be conducted in accordance with KRS Chapter 230 and 811 KAR Chapter 1.

(2) Wagering on an historical horse race shall only be conducted by:

(a) An association licensed to conduct a live horse race meet; or (b) Two (2) or more associations licensed to conduct a live horse race meet who form a joint venture or otherwise pursuant to an agreement between them.

(3) Wagering on an historical horse race shall only be permitted in a designated area on the licensed premises of an association licensed to conduct a live horse race meeting. Wagering on historical horse racing shall not be offered in any other location.

(4) An association may conduct wagering on historical horse races of any horse breed regardless of the type of breed that primarily races in live meets conducted by the association. An association may conduct wagering on historical races on any days and hours approved by the commission, and shall not be limited to times during which the association is conducting a live horse race meeting.

(5) Any wager placed on an historical horse race is an exotic wager.

(6) Before offering wagering on an historical horse race, an association shall first obtain the commission's written approval of all wagers offered as set forth in 811 KAR 1:250.

(7) All wagering on an historical horse race shall incorporate the following elements:

(a) A patron may only wager on an historical horse race on a terminal approved by the commission;

(b) An association shall at all times maintain at least two (2) terminals offering each type of exotic wager on an historical horse race;

(c) Once a patron deposits the wagered amount in the terminal offering wagering on an historical horse race, an historical horse race shall be chosen at random;

(d) Prior to the patron making his or her wager selections, the terminal shall not display any information that would allow the patron to identify the historical race on which he or she is wagering, including the location of the race, the date on which the race was run, the names of the horses in the race, or the names of the jockeys that rode the horses in the race;

(e) The terminal shall make available true and accurate past performance information on the historical horse race to the patron prior to making his or her wager selections. The information shall be current as of the day the historical horse race was actually run. The information provided to the patron shall be displayed on the terminal in data or graphical form; and

(f) After a patron finalizes his or her wager selections, the terminal shall display a video replay of the race, or a portion thereof, and the official results of the race. The identity of the race shall be revealed to the patron after the patron has placed his or her wager.

Section 4. Payouts Only Out of Pari-Mutuel Pools: Seed Pools Required. (1)(a) A wager on an historical horse race, less deductions permitted by KRS Chapter 230 or these administrative regulations, shall be placed in pari-mutuel pools approved by the commission.

(b) A payout to a winning patron shall be paid from money wagered by patrons and shall not constitute a wager against the association.

(c) An association conducting wagering on an historical horse race shall not conduct wagering in such a manner that patrons are wagering against the association, or in such a manner that the amount retained by the association as a commission is dependent upon the outcome of any particular race or the success of any particular wager.

(2) An association shall only pay a winning wager on an historical horse race out of the applicable pari-mutuel pool and shall not pay a winning wager out of the association's funds. In no event shall payment of a winning wager exceed the amount available in the applicable pari-mutuel pool.

(3) An association offering wagering on an historical horse race shall operate seed pools in a manner and method approved by the commission. For each wager made, an association may assign a

percentage of the wager to seed pools. The seed pools shall be maintained and funded so that the amount available at any given time is sufficient to ensure that a patron will be paid the minimum amount required on a winning wager.

(4) An association shall provide the funding for the initial seed pool for each type of exotic wager. The funding for the initial seed pool shall be nonrefundable and in an amount sufficient to ensure that a patron will be paid the minimum amount required on a winning wager.

Section 5. Location of Terminals Used for Wagering on an Historical Horse Race. (1) Terminals offering wagering on historical horse races shall be located within designated areas which have the prior written approval of the commission. Designated areas shall be established in such a way as to control access by the general public and prevent entry by any patron who is under eighteen (18) years of age or is otherwise not permitted to place wagers on an historical horse race.

(2) Each association shall be responsible for monitoring persons entering and leaving the designated areas and shall be responsible for preventing access to any patron who is under eighteen (18) years of age or is otherwise not permitted to place wagers on historical horse races.

(3) Each association shall provide terminals that are accessible to handicapped patrons.

Section 6. Records to be Maintained. (1) Each association and each simulcast facility authorized under KRS 230.380 shall maintain complete records of all pari-mutuel wagering transactions on live and historical horse races, including the amounts wagered at each betting window, self-service totalizator, mobile pari-mutuel teller, and terminal.

(2) A copy of the wagering records shall be retained and safeguarded for a period of not less than two (2) years and shall not be destroyed without the prior written permission of the commission.

Section 7. Equipment. (1) The association and the totalizator provider shall install a primary and secondary device, which activate the stop betting function of the totalizator system. The presiding judge, or his or her designee, shall use the primary device to stop wagering at the start of the race. In the event that wagering is not stopped by the primary device at the start of the race, the totalizator operator shall stop wagering using the secondary device. The secondary device shall be installed in the totalizator room and shall only be used by the totalizator operator.

(2) If there is a complete breakdown of the totalizator or mechanical equipment during the wagering on a live horse race, the wagering on that race shall be declared closed. If the totalizator remains capable of computing payouts, the payouts for that race shall be computed based on the amounts wagered prior to the breakdown. If the totalizator is incapable of computing payouts, then refunds shall be issued for all amounts wagered on that race.

(3) If there is a complete breakdown of a terminal offering wagering on an historical horse race, the association offering the wager shall make a full refund of the patron's balance on the terminal at the time of the breakdown.

Section 8. Entries in a Live Horse Race. (1) The presiding judge shall timely advise an association's pari-mutuel manager, prior to the beginning of wagering on each race, of the horses that will compete in the race.

(2) If two (2) or more horses entered for the same live horse race are determined by the commission to have common ties through ownership or training they may be joined by the commission as a mutuel entry. The mutuel entry shall become a single betting interest and a wager on one (1) horse in a mutuel entry shall be a wager on all horses in the same mutuel entry. If the number of horses competing in a live horse race exceeds the numbering capacity of the totalizator, the racing secretary shall assign the highest pari-mutuel numbers to horses so that the highest numbered horse within the numbering capacity of the totalizator together with horses of higher numbers, shall be grouped in the mutuel field as a single betting interest, and a wager on one (1) horse in the mutuel field shall be a wager on all horses in the same

mutuel field.

(3) A refund at cost value shall be made to all holders of a purchased ticket bearing the number of a horse in any race that has been scratched or withdrawn before the horse has become a starter, unless the horse is part of a mutuel entry, and one (1) or more of the entry starts.

Section 9. Sale of Pari-Mutuel Tickets on Live Horse Races. (1) The following types of pari-mutuel wagering shall be permitted on a live horse race at all licensed associations and simulcast facilities:

- (a) Normal win, place, and show wagers on each race;
- (b) Any exotic wager previously approved by the commission; and
- (c) Any new exotic wager approved in writing by the commission.

(2) Pari-mutuel tickets on live horse races shall not be sold except by a licensed association or a simulcast facility authorized by KRS 230.380.

(3) Pari-mutuel tickets on a live horse race shall only be sold at regular ticket windows, self-service totalizator machines, by mobile pari-mutuel tellers with hand-held totalizator devices, or by any other method approved in writing by the commission prior to being offered to the public. At least one (1) regular ticket window shall be made accessible to handicapped patrons.

(4)(a) Pari-mutuel stored value cards or cash vouchers may be offered by an association. The dollar amount on the stored value card or cash voucher may be redeemed at any time at any regular ticket window or used to fund additional wagers.

(b) Cash vouchers shall be valid for one (1) year after the date of issuance. Failure to present any cash voucher for redemption within one (1) year of issuance shall constitute a waiver of the right to receive payment thereon.

(5) No pari-mutuel wager shall be made on a race after the totalizator has been locked for that race.

(6) Any claim by a patron that he or she has been issued a pari-mutuel ticket other than that which was requested shall be made before the patron has left the ticket window or before the mobile teller has initiated a transaction with another patron. No claims for incorrect tickets will be honored after the totalizator has been locked.

Section 10. Payment on Pari-Mutuel Tickets on Live Horse Races. (1) At the end of each race, the judges shall advise the manager of the pari-mutuel department by the use of the totalizator equipment or by telephone of the official placement of the horses, and no payouts shall be made until the receipt of the notice.

(2) Payment of valid pari-mutuel tickets shall be made on the basis of the order of finish as declared "official" by the judges. A subsequent change in the order of finish or award of purse money that may result from a subsequent ruling by the judges or commission shall not affect the pari-mutuel payout.

(3) Each association shall deduct from each pari-mutuel pool a commission, not exceeding the commission provided by KRS 230.750. The remainder of the pool after the deduction of the commission shall be the net pool for distribution as payouts to ticket holders.

(4) Payment on valid pari-mutuel tickets shall be made only if presented and surrendered within one (1) year following the running of the live horse race on which the wager was made. Failure to present any such ticket within one (1) year shall constitute a waiver of the right to receive payment thereon.

(5) The association shall be responsible for the correctness of all payout prices posted as "official." If an error is made in posting the payout figures, and ascertained before any tickets are cashed thereon, the posting error shall be corrected, accompanied by a public address announcement, and only the correct amounts shall be used in the payout, irrespective of the initial error.

(6) A mutilated pari-mutuel ticket that is not easily identifiable as being a valid ticket shall not be accepted for payment.

(7) An association shall establish a written procedure for granting patrons an opportunity to file a claim on a lost pari-mutuel ticket and provide a copy to the commission.

(8) Prior to posting payouts, the association's pari-mutuel

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manager shall require the verification of the winning runners and prices prior to posting official results.

(9)(a) If an error is made in calculating the payout on a winning wager, resulting in overpayment, the association shall be responsible for the amount between the correct payout and the amount paid.

(b) If the error in calculation results in a payout being too low, the amount between the correct payout and the amount paid shall be added to the net pool of the same position in the following race on the same day or, if it is the last race of the day, then it shall be added to the net pool of the same position in the same race on the following day. If an error occurs in computing the daily double pool, the underpayment shall be added to the daily double pool of the following day.

(c) If an error occurs causing underpayment on the last race of the entire racing meeting, the amount of the underpayment shall be paid to the Kentucky Revenue Cabinet.

Section 11. Minimum Wagers and Payouts. (1) The minimum wager to be accepted by any licensed association on a live horse race shall be ten (10) cents. The minimum payout on a one (1) dollar wager on a live horse race shall be one (1) dollar and ten (10) cents, unless a minus pool occurs. If a minus pool occurs, the minimum payout for a one (1) dollar wager shall be one (1) dollar and five (5) cents.

(2) The minimum wager to be accepted by any licensed association on an historical horse race shall be ten (10) cents. The minimum payout on any wager shall not be less than the amount wagered.

Section 12. Minors Prohibited from Wagering. A minor shall not be permitted by any licensed association or simulcast facility to purchase or cash a pari-mutuel ticket.

Section 13. Odds and Payouts Posted. (1) Approximate odds for live horse races, based on win pool betting for finishing first for each betting interest, shall be posted on one (1) or more boards or television screens within view of the wagering public at intervals of not more than ninety (90) seconds.

(2) If daily double wagering is conducted on a live horse race, before off-time of the second daily double race, the probable payout for each two (2) dollar daily double wager combining the winner of the first daily double race with every horse or betting interest in the second daily double race shall be posted; except that if a dead heat for first in the first daily double race occurs, or a scheduled starter in the second daily double race is excused so as to cause a consolation daily double pool, then posting of all possible payouts shall not be mandatory, but the association shall make every effort to compute such daily double prices and advise the public by posting or public address announcement as soon as possible and prior to the running of the second daily double race.

(3) For wagering on an historical horse race, approximate odds or payouts for each wagering pool shall be posted on each terminal for viewing by patrons at intervals of no more than ninety (90) seconds.

Section 14. Betting Explanation. (1) Each association shall publish in the daily race program, for each day of live horse racing, a general explanation of pari-mutuel wagering offered on live horse races and an explanation of each type of betting pool offered. The explanation also shall be posted in conspicuous places about the association grounds to adequately inform the public and shall be submitted to the commission prior to publication for approval.

(2) Each association shall post, in conspicuous places in the designated area, a general explanation of pari-mutuel wagering offered on historical horse races and an explanation of each betting pool offered. The explanation shall be submitted to the commission for approval prior to its posting.

Section 15. Prior Approval Required for Number of Live Horse Races. Each association desiring to conduct more than nine (9) live horse races on a single day shall first apply in writing to the commission and obtain specific approval of the number of live horse races to be offered on a single day.

Section 16. Pools Dependent Upon Entries for Live Horse Races. (1) If horses representing five (5) or fewer betting interests qualify to start in a live horse race, the association may prohibit show wagering on that race. If horses representing four (4) or fewer betting interests qualify to start in a live horse race, the association may prohibit both place and show wagering on that race.

(2) If a horse is scratched by the judges after wagering has commenced or a horse is prevented from running in a live horse race because of failure of a starting-gate door to open properly, and the number of actual starters representing different betting interests is:

(a) Reduced to five (5), the association may cancel show wagering on that race and the entire show pool shall be refunded upon presentation and surrender of show tickets; or

(b) Reduced to four (4) or fewer, the association may cancel both place and show wagering on that race and the entire place and show pool shall be refunded upon presentation and surrender of place and show tickets.

Section 17. Emergency Situation. If any emergency arises in connection with the operation of the pari-mutuel department not provided for by this administrative regulation, the pari-mutuel manager shall take immediate corrective action and shall by the quickest means possible notify the presiding judge and render a full report to the commission.

Section 18. Severability. In the event that any provision or administrative regulation of this chapter is found to be invalid, the remaining provisions of this chapter shall not be affected nor diminished thereby. ~~(Section 1. Equipment. (1) Licensees may use vending machines for the sale of pari-mutuel tickets.~~

~~(2) The controls necessary to operate the odds board in the infield, relative to the way the horses finish, (if the finish is being contested, if there is a photo, dead heat, time, or race) shall be located in the judge's stand and controlled only by the presiding judge, or one associate judge designated to do so.~~

Section 2. Sale of Pari-mutuel Tickets. (1) Only one (1) method of selling pari-mutuel tickets shall be used for the sale of tickets on individual races during any racing day.

(2) Unless prior commission approval has been obtained, pari-mutuel tickets shall not be sold except through regular ticket windows.

(3) Book-making or betting other than pari-mutuel betting shall be strictly prohibited.

(4) A minor shall not be allowed to bet and a mutuel employee shall not sell or pay a wager to a minor.

(5) All wagering shall stop as soon as the word "go" shall be given by record or by voice of the starter. Vending machines for the sale of pari-mutuel tickets shall be electrically locked by the presiding judge from the judge's stand.

(6) When the sale of pari-mutuel tickets has closed, it shall remain closed until after the race has finished and has been declared official, unless an objection imposes a delay. If an objection imposes a delay, the sale of pari-mutuel tickets for the next succeeding race may be begun without waiting for the race to be declared official.

(7) The method of selling pari-mutuel tickets shall be approved by the commission.

(8) The manager of the pari-mutuel department shall be properly and timely advised by the presiding judge, prior to the beginning of wagering on each race, of the horses that will compete in the race.

(9) If less than five (5) interests qualify horses to start in a race, the manager of the pari-mutuel department may prohibit show wagering on that race.

(10) If less than four (4) interests qualify horses to start in a race, the manager may prohibit both place and show wagering on that race.

(11) If less than three (3) interests qualify horses to start in a race, the manager may prohibit wagering on that race.

(12) The manager may prohibit win, place, or show wagering on any particular horse or entry in any race. The exclusions shall be clearly indicated on the program or score card or announced

and horses excluded shall be numbered to indicate that they are not coupled in the field. Horses once excluded from the betting shall remain excluded during the day or race in which they are scheduled to start.

(13) If more horses representing separate interests are started in a race than the number of post positions on the infield tote board, all horses in excess of a number of interests one (1) less than the total number of post positions on the infield tote board shall be grouped in the betting as the field.

(14) A refund at cost value shall be made to all holders of a purchased ticket bearing the number of a horse in any race which has been scratched or withdrawn before the horse has become a starter in the race under the rules, unless the horse is part of an entry, and one (1) or more of the entry starts.

Section 3. Payments. (1) Payments due on all wagers shall be made in conformity with the well established practice of the pari-mutuel system. The practice shall work in dollars and not in the number of tickets. Money wagering on winning tickets shall be returned in full plus the profits. For a winning mutuel pool, each licensee shall redistribute not less than one (1) dollar and ten (10) ten-cents on each one (1) dollar wagered. If there is a minus pool, the minimum payoff of each one (1) dollar wagered shall be one (1) dollar and five (5) cents.

(2) At the end of each race, the judges shall advise the manager of the pari-mutuel department by the use of the tote equipment or by telephone of the official placement of the horses, and no payoffs shall be made until the receipt of the notice.

(3) If a horse wins and there is no money wagered on him to win, the win pool shall be apportioned among the holders of the place tickets on that horse, if any, otherwise among holders of the show tickets.

(4) If no money has been wagered to place on a horse which is placed first or second in a race, the place pool for that race shall be apportioned among the holders of the place tickets on the other horse which was placed first or second.

(5) If no money has been wagered to show on a horse which has placed first, second, or third in a race, the show pool in that race shall be apportioned among the holders of show tickets on the other horses which are placed first, second, or third in that race.

(6) If only two (2) horses finish in any one (1) race, the show pool shall be figured the same as the place pool and monies shall be apportioned to the holders of show tickets on the two (2) finishing horses. If only one (1) horse finishes in any one (1) race, all three (3) pools shall be figured separately as straight pools and all the monies shall be awarded to the ticket holders of the finishing horse. If no horse finishes the race, then the entire pool shall be refunded to all ticket holders.

(7) If two (2) horses finish in a dead heat for first place, the money in the win mutuel pool shall be divided between the two (2) dead heaters according to their proportionate shares in the pool.

(8) If two (2) horses finish in a dead heat for second place, the division shall be made as follows: There shall be allotted to the pool of the winner of the race one half (1/2) of the place pool and the two (2) dead heaters one half (1/2) each of the remaining half of the place pool.

(9) If two (2) horses coupled in the betting as an entry or the field finish first and second, first and third, or second and third, two-thirds (2/3) of the net show pool shall be allotted to the pool of the entry and the balance one-third (1/3) to the other horse.

(10) If one (1) horse of the entry or the field finishes first or second and the other part of the entry or field finishes in a dead heat for third with another horse, the division of the net show pool shall be as follows: one half (1/2) of the net show pool shall be allotted to the pool of the entry, one-third (1/3) to the nonentry horse not involved in the dead heat, and one-sixth (1/6) to the nonentry horse finishing in the dead heat.

(11) If the entry or field horses finish first, second, and third, the entire money in each pool shall go to the entry or field tickets, and no other tickets shall participate.

(12) A mutilated pari-mutuel ticket that is not easily identifiable as being a valid ticket shall not be accepted for payment.

(13) Claims for lost pari-mutuel tickets shall not be considered.

(14) If an error is made in calculation resulting in a price being

too high, the association shall lose the amount between the proper price and the one paid. If the error in calculation results in a price being too low, the amount between proper price and price paid shall be added to the net pool of the same position in the following race on the same day or if it is the last race of the day then it shall be added to the net pool of the same position in the same race on the following day. If an error occurs causing underpayment on the last race of the entire racing meeting, the underpayment shall be paid to the Kentucky Revenue Cabinet.

Section 4. Daily Doubles. (1) There shall not be an exchange of daily double tickets after the purchaser has left the sales window.

(2) The daily double shall not be a parlay, and shall not have a connection with or relation to any other pari-mutuel pool conducted by the association, nor to any win, place, or show pool shown on the totalizer board. All tickets on the daily double shall be calculated in an entirely separate pool. Without prior commission approval, only one (1) daily double shall be permitted during any single program.

(3) All tickets shall be to win (straight) only. Entries and the field shall run as one (1) horse in the daily double. If two (2) or more horses in a race are coupled on the same totalizer ticket, there shall not be refunds, unless all of the horses so coupled are excused before off time.

(4) Selections shall be made of one (1) horse for each of the two (2) races in the daily double by tote program numbers.

(5) If no ticket is sold combining the two (2) winners of the daily double, the pool shall then be apportioned equally between those having tickets including the winner in the first race of the daily double and those having tickets including the winner in the second race of the daily double in the same manner in which a place pool is calculated and distributed.

(6) If no ticket is sold on the winner of the first race of the daily double on any combination, the entire pool shall be apportioned to the holders of tickets on the winner of the second race of the daily double. If no ticket is sold on the winner of the second race of the daily double or any combination, the entire pool shall be apportioned to the holders of tickets on the winner of the first race of the daily double.

(7) If a dead heat to win results in either the first or second race of the daily double, the total pool shall be calculated as a place pool. If there is a dead heat for the winner of the first race of the daily double, the posting of payoff prices shall be made after the winner of the second race of the daily double is official.

(8) If no ticket is sold containing the numbers of either winner on any combination, the pool shall be allotted to those having tickets on horses finishing next to the winners.

(9) If any horse or horses in the first half of the daily double are excused by the judges after the horses have left the paddock for the post, or after the betting on the daily double has been closed, or if any horse or horses in the first half of the daily double are prevented from racing because of failure of the arm or arms of the starting gate to open, the money wagered on any horse or horses excused or prevented from racing shall be deducted from the daily double pool and refunded to the purchaser or purchasers of tickets on the horse or horses excused or prevented from racing.

(10) If a horse is scratched from the second half of the daily double before it becomes a starter in the second half, but after the first half of the daily double has been run, all daily double tickets combining the scratched horse in the second race of the daily double with the actual winner of the first race of the daily double shall be paid a price equivalent to that fraction of the net pool derived by dividing the net pool by the total purchase price of all tickets combining the winner of the first race of the daily double with all horses in the second race of the daily double. The total payoff on all tickets combining the winner of the first race of the daily double with the scratched horse in the second race of the daily double as determined by the method set forth in this rule shall be deducted from the net daily double pool.

(11) The possible payoff prices shall be posted or announced to the public before the start of the last race of the daily double, and as soon as possible after the horses in the race of the last half of the daily double have entered upon the track on the way to the

post.

(12) If for any reason the second race of the daily double is cancelled or declared "no race" by the judges after the first daily double race is declared official, then the net daily double pool shall be distributed to wagering combinations which include the horse or betting interest which finished first in the first daily double race.

(13) If a daily double is scheduled to be held, subsections (1) to (12) of this section shall be printed in conspicuous places in the grandstand area and an abbreviated version shall be printed on the day's racing program, and a notice shall be printed on the program as follows: "Retain Your Tickets Until The Result of the Daily Double Has Been Posted."

Section 5. Perfecta Wagering. (1) The perfecta shall be a contract by the purchaser of a ticket combining two (2) horses in a single race, selecting the two (2) horses that will subsequently finish first and second in that race. Payment of the ticket shall be made only to the purchaser who has selected the same order of finish as officially posted.

(2) The perfecta shall not be a parlay and shall not have a connection with or relation to the win, place, or show betting and shall be calculated as an entirely separate pool.

(3) If no ticket is sold on the winning combination of a perfecta pool, the net pool shall be distributed equally between holders of tickets selecting the winning horse to finish first. If no ticket is sold on the winning combination of a perfecta pool or tickets selecting the winning horse to finish first, the net pool shall be distributed equally between holders of tickets selecting the second place horse to finish second.

(4) If no ticket is sold that would require distribution of a perfecta pool to a winner pursuant to subsection (3) of this section, the association shall make a complete and full refund of the perfecta pool.

(5) If there is a dead heat between two (2) horses for first place, the net perfecta pool shall be calculated and distributed as a place pool to holders of tickets of the winning combinations. If there is a dead heat between two (2) horses for second place, the perfecta pool shall be figured as a place pool, and the holders of tickets combining the winning horse and the two (2) horses finishing second shall participate in the payoff.

(6) If there is a dead heat for second place, and if no ticket is sold on one (1) of the two (2) winning combinations, the entire net pool shall be calculated as a win pool and distributed to those holding tickets on the other winning combination. If no tickets combine the winning horse with either of the place horses in the dead heat, the perfecta pool shall be calculated and distributed as a place pool to holders of tickets representing any interest in the net pool.

(7) If two (2) or three (3) horses coupled in an entry or the mutual field finish first and second or first, second, and third, the winning combination shall be the coupled horses and the horse placed immediately behind such entry or field.

Section 6. Quinella Wagering. (1) The quinella shall be a form of a pari-mutuel wagering consisting of selecting the first two (2) horses to finish, irrespective of their place of finish.

(2) The quinella shall not be a parlay and shall not have a connection with or relations to the win, place, or show betting and shall be calculated as an entirely separate pool.

(3) If there is a dead heat between two (2) horses for first place, the combination shall be the winner of the quinella pool. If there is a dead heat between two (2) horses for second place, the quinella pool shall be figured as a place pool, and the holders of tickets combining the winning horse and the two (2) horses finishing second shall participate in the payoff.

(4) If there is a dead heat for second place, and if no ticket is sold on one (1) of the winning combinations, the entire net pool shall be calculated as a win pool and distributed to those holding tickets on the other winning combination. If no tickets combine the winning horse with either of the place horses in the dead heat, the net pool shall be calculated and distributed as a place pool to holders of tickets combining either of the place horses; except, if any tickets combine both horses in the dead heat for place, the net pool shall be calculated and distributed as a win pool to holders of such tickets.

(5) If no ticket is sold on the winning combination of a quinella pool, the net pool shall then be apportioned equally between those having tickets including the horse finishing first and those having tickets including the horse finishing second in the same manner in which a place pool is calculated and distributed.

(6) If no ticket is sold that would require distribution of a quinella pool to a winner as defined in this section, the association shall make a complete and full refund of the quinella pool.

(7) If a perfecta or quinella is scheduled to be held, each association shall print an abbreviated version of the rules established by this section on the day's racing program.

(8) If two (2) or three (3) horses coupled in an entry or the mutual field finish first and second, or first, second, and third, the winning combination shall be the coupled horses and the horse placed immediately behind such entry or field.

Section 7. Double Perfecta Wagering. (1) The double perfecta shall be a form of pari-mutuel wagering in which the bettor selects the two (2) horses that will finish first and second in each of two (2) consecutive races in the exact order as officially posted.

(2) Double perfecta tickets shall be sold only at double perfecta windows and only from automatic double issue machines.

(3) Each bettor purchasing double perfecta tickets shall designate his two (2) selections as the first two (2) horses to finish in that order in the first of two (2) consecutive races.

(4) After the official declaration of the first two (2) horses to finish in the first race of the double perfecta, each bettor holding a ticket combining the first two (2) horses in the exact order of finish shall, prior to the running of the second double perfecta race, exchange the ticket at the double perfecta window and shall select the two (2) horses to finish in the second race of the double perfecta in the exact order as officially posted. Further money shall not be required of the holder of the ticket to make the exchange.

(5) A double perfecta exchange ticket upon the second race shall not be issued except upon the exchange of the double perfecta ticket from the first race pursuant to subsection (4) of this section. The double perfecta pool obtained from the sales of double perfecta tickets upon the first race shall be held and divided among the winning tickets of the double perfecta exchange tickets, subject to the rules established by this section. Double perfecta windows shall be open to make the exchange only after the first race has been declared official.

(6) If a winning double perfecta ticket from the first race is not presented for exchange within the time provided, the bettor shall forfeit all rights to any distribution or refund unless the second half of the double perfecta is cancelled or declared "no race".

(7) If a horse is scratched in the first race of the double perfecta races, all double perfecta tickets on the scratched horse shall be refunded.

(8) If a horse is scratched in the second race of the double perfecta, after the first race of the double perfecta has been declared official, all exchange tickets combining the scratched horse shall become consolation tickets and shall be paid a price per dollar denomination calculated as follows: the net double perfecta pool (gross pool less commission) shall be divided by the total purchase price of all tickets combining the winners of the first race of the double perfecta. The quotient thus obtained shall be the price to be paid to holders of exchange tickets combining the scratched horse in the second race of the double perfecta. The entire consolation pool (number of eligible tickets times the consolation price) shall be deducted from the net double perfecta pool.

(9) If no double perfecta ticket is sold as a winning combination in the first race of the double perfecta, the double perfecta pool shall be divided among those having tickets including the horse finishing first and those having tickets including the horse finishing second and the distributions shall be calculated and made as a place pool. If that occurs, the double perfecta race shall end and the pool shall be closed for the day.

(10) If no double perfecta exchange ticket is sold on the winning combination, the net pool shall then be apportioned equally between those having tickets including the horse finishing first and those having tickets including the horse finishing second in the same manner by which a place pool is calculated and distributed.

(11) If a double perfecta exchange ticket combines only one (1)

of the two (2) winners and no double perfecta exchange ticket combines the other winner, the entire pool shall be distributed as a straight pool to the holders of those tickets.

(12) If no exchange ticket includes either the first or second horse of the second half of the double perfecta, the entire net pool shall be distributed as a straight pool to all holders of exchange tickets.

(13) If there is a dead heat for place in the first race of the double perfecta races, all double perfecta tickets combining the first horse and either of the place horses shall be eligible for exchange for double perfecta exchange tickets.

(14) If there is a dead heat for place in the second race of the double perfecta, the double perfecta pool shall be divided, calculated, and distributed as a place pool to the holders of double perfecta exchange tickets combining the first horse and either of the place horses. If there is a dead heat to place and there are no tickets sold on one (1) combination, then the other combination having the winning horses shall be declared the winner. If no exchange tickets combine the winning horse with either of the place horses in the dead heat, the double perfecta pool shall be calculated and distributed as a win pool to holders of tickets representing any interest in the net pool.

(15) If for any reason the second of the double perfecta races is cancelled or declared "no race", the pool shall be calculated as a straight pool and shall be distributed among the holders of the tickets combining the first two (2) horses of the first race of the double perfecta otherwise eligible for double perfecta exchange tickets and also distributed to holders of the double perfecta exchange tickets.

(16) If there is a dead heat for the winning horse in either of the two (2) consecutive races for the double perfecta, the calculation of the distribution of the double perfecta pool shall be made in the manner in which any ordinary perfecta pool would be made if there was a dead heat for the win despite the number of horses involved in the dead heat.

(17) The purchase of double perfecta tickets other than through pari-mutuel machines and the sale of double perfecta tickets from one (1) individual to another shall be deemed illegal and shall be prohibited.

Section 8. Big Q Rules. (1) Each operator wishing to conduct Big Q wagering shall first petition the commission for permission to do so.

(2) Each operator shall either print in the daily program or prominently post at all areas where Big Q wagering is conducted the complete rules for Big Q wagering as established by this section.

(a) The Big Q shall consist of selecting the quinella (the first two (2) horses to finish) of each of two (2) consecutive races. Pari-mutuel wagering tickets shall be sold upon the first race of the (2) races only. The division of the pool shall be calculated as in a straight pool, except as provided by this section.

(b) Entries or field horses shall not be allowed to start in any race comprising the Big Q.

(c) Tickets shall be sold only at Big Q windows and only from automatic double-issuing machines.

(d) Each bettor purchasing tickets shall designate his two (2) selections as the first two (2) horses to finish in the first race of the two (2) races.

(e) After the official declaration of the first two (2) horses to finish the first of the Big Q races, each bettor holding a ticket combining the two (2) horses to finish shall, prior to the running of the second race, exchange the winning ticket for a Big Q exchange ticket at the Big Q windows and shall select the first two (2) horses to finish in the second race of the Big Q. Further money shall not be required of the holder of the ticket to make the exchange.

(f) A Big Q exchange ticket upon the second race shall not be issued except upon the surrender of the Big Q ticket from the first race pursuant to paragraph (f) of this subsection. The Big Q pool obtained from the sales of the Big Q tickets upon the first race shall be held and divided among the winning tickets of the Big Q exchange tickets, pursuant to the rules established by this section. Big Q windows shall be open to make the exchange only after the first race has been declared official and the windows shall close at

post time at the start of the second race of the Big Q races.

(g) If a winning Big Q ticket from the first race is not presented for exchange within the time provided, the bettor shall forfeit all rights to any distribution or refund unless the second half of the Big Q is cancelled or declared "no race", or if no exchange ticket includes either the first or second horse of the second half of the Big Q.

(h) If a horse is scratched in the first race, all Big Q tickets on the scratched horse shall be refunded. If a horse is scratched in the second race, the holders of tickets on the scratched horse shall be entitled to exchange their tickets for another selection. If there is a late scratch, after the exchange windows have closed, all exchange tickets combining the scratched horse shall become consolation tickets and shall be paid a price per dollar denomination calculated as follows: The net Big Q pool (gross pool less commission) shall be divided by the total purchase price of all tickets combining the winnings of the first race of the Big Q. The quotient obtained shall be the price to be paid to holders of exchange tickets combining the scratched horse in the second race of the Big Q. The entire consolation pool (number of eligible tickets times the consolation price) plus the breakage shall be deducted from the net Big Q pool.

(i) If no ticket is sold as a winning combination in the first race of the Big Q, the Big Q pool shall be divided among those having tickets including the horse finishing first or second and the distributions shall be calculated and made as a place pool. If that occurs, the Big Q race shall end and the pool shall be closed for the day.

(j) If no Big Q exchange ticket is sold on the winning combination, the net pool shall be apportioned equally between those having tickets including the horse finishing second in the same manner in which a place pool is calculated and distributed.

(k) If a Big Q exchange ticket combines only one (1) of the winners and no Big Q exchange ticket combines the other winner, the entire pool shall be distributed as a straight pool to the holders of those tickets.

(l) If no exchange ticket includes either the first or second horse of the second half of the Big Q, the entire net pool shall be distributed as a straight pool to all holders of exchange tickets and winning combinations of the first half that have not been exchanged.

(m) If there is a dead heat for place in the first race of the Big Q races, all Big Q tickets combining the first horse and either of the place horses shall be eligible for exchange for Big Q exchange tickets.

(n) If there is a dead heat for place in the second race of the Big Q races, the pool shall be divided, calculated, and distributed as a place pool to the holders of Big Q exchange tickets combining the first horse and either of the place horses. If there is a dead heat to place and there are no tickets sold on one (1) combination, then the other combination having winning horses shall be declared the winner.

(o) If no exchange tickets combine the winning horse with either of the place horses in the dead heat, the Big Q pool shall be calculated and distributed as a place pool to holders of tickets combining either of the place horses, except if any exchange tickets combine both horses in the dead heat for place, the Big Q pool shall be calculated and distributed as a place pool to holders of such tickets.

(p) If for any reason the first race of the Big Q races is cancelled or declared "no race", a full and complete refund shall be made from the Big Q pool.

(q) If for any reason, the second of the Big Q races is cancelled or declared "no race", the pool shall be calculated as a straight pool and shall be distributed among the holders of tickets combining the first two (2) horses of the first race of the Big Q otherwise eligible for Big Q exchange tickets and also distributed to holders of the Big Q exchange tickets.

(r) If there is a dead heat for the winning horses in either of the two (2) consecutive races for the Big Q, the calculation of the distribution of the Big Q pool shall be made in the manner in which any ordinary quinella pool would be made if there was a dead heat for the win despite the number of horses involved in the dead heat.

(e) If an incorrect exchange ticket is issued during the second half of the Big Q pool, the incorrect exchange ticket shall be turned

in to the state auditor prior to the running of the second half. The tickets shall be deducted from both exchange and individual combination totals. The ticket shall be voided and filed with the performance worksheets and a report, including the seller's name and license number, shall be made to the commission of the complete incident.

Section 9. Trifecta Wagering. (1) The trifecta shall be a contract by the purchaser of a ticket combining three (3) horses in a single race, selecting the three (3) horses that will subsequently finish first, second, and third in that race. Payment of the ticket shall be made only to the purchaser who has selected the same order of finish as officially posted.

(2) The trifecta shall not be a parlay and shall have no connection with or relation to the win, place, and show betting and shall be calculated as an entirely separate pool.

(3) Trifecta tickets shall not be sold in less than one (1) dollar denominations.

(4) If no ticket is sold on the winning combination of a trifecta pool, the net pool shall be distributed to the holders of tickets selecting the win and place finishers in that order. If no ticket is sold combining the win and place finish, the net pool shall be distributed to the holders of tickets selecting the winner.

(5) If no ticket is sold that requires distribution of the net trifecta pool to a winner pursuant to subsection (4) of this section, the association shall make a full refund of the trifecta pool.

(6) If there is a dead heat or dead heats, all trifecta tickets selecting the correct order of finish, counting a horse in a dead heat as finishing in either position dead heated, shall be winning tickets. The payoff shall be calculated as a place pool.

(7) If there is a scratch in the trifecta, no exchanges shall be made. All tickets which include the scratched horse shall be eliminated from further participation in the trifecta pool and shall be refunded.

(8) Those horses constituting an entry of coupled horses or those horses coupled to constitute the field in a race comprising the trifecta shall race as a single wagering interest for the purpose of trifecta pari-mutuel pool calculations and payouts to the public.

(9) Trifecta tickets shall be sold only by the licensee through pari-mutuel machines programmed to print all selections on one (1) ticket. Resale of such tickets from one (1) individual to another shall be prohibited and shall be grounds for ejection.

(10) Each association shall print in heavy type in a conspicuous place in its printed program all the provisions of this section and post-printed copies of this section about the track.

(11) For the purpose of trifecta wagering, the trifecta race shall be drawn to consist of six (6) separate wagering interests.

(12) Nothing in this section shall preclude the sale of combination trifecta tickets in the amount of six (6) dollars.

Section 10. Twin Trifecta. The twin trifecta shall be a form of pari-mutuel wagering. It shall not be a parlay and shall not have a connection with or relation to any other pari-mutuel pools made and conducted by an association. The twin trifecta shall not be connected with or related to any win, place, and show pools shown on the totalizator board, and it shall not be governed by any division rules pertaining to the distribution of any other pari-mutuel pools.

(1) In the twin trifecta, the bettor shall select the three (3) horses that will finish first, second, and third in each of the two (2) designated twin trifecta races in the exact order as officially posted.

(2) Twin trifecta tickets shall be sold and exchanged only from the association's ticket-issuing machines.

(3) Twin trifecta wagers shall be made only in denominations of three (3) dollars.

(4) Each bettor purchasing twin trifecta tickets shall designate three (3) selections as the first three (3) horses to finish in that order in the first race of the designated two (2) twin trifecta races.

(5) After the wagering closes for the first half of the twin trifecta, the commissions shall be deducted from the pool pursuant to KRS 138.510. The remaining pool shall then be divided into two (2) separate pools of equal amounts.

(6) The money in the first part of the divided pool shall be distributed to the holders of the twin trifecta tickets selecting the first

three (3) horses, in order, on the first designated twin trifecta race, in accordance with this administrative regulation. The term "first part of divided pool" shall mean one half (1/2) of the net distributive pool of the total money wagered in the twin trifecta on the current program only and, specifically excluded therefrom shall be any carry-over of any special cumulative second race twin trifecta pool from any previous program.

(7) The second part of the divided pool shall be placed in a separate pool to be distributed to holders of second half twin trifecta tickets selecting the first three (3) horses, in order, on the second designated twin trifecta race, in accordance with this administrative regulation.

(8) In the first half of the twin trifecta only, if there is a failure to select, in exact order, the first three (3) horses, payoffs and exchanges shall be made on twin trifecta tickets selecting in the following order of priority:

(a) The first two (2) horses in exact order, if no such ticket is outstanding, then;

(b) The first horse, and any ticket within the applicable above order of priority shall be deemed a winning ticket entitling the holder thereof to an exchange ticket, in addition to the usual payoff for first half winners; and

(c) Failure to select winner to win, regardless of the selection of the exact order of the second or third horse shall cause a refund to all twin trifecta tickets.

(9) After the official declaration of the first three (3) horses to finish in the first race of the twin trifecta, each bettor holding a winning ticket shall, prior to the running of the second twin trifecta race, exchange the winning ticket for both the monetary value established by the association's mutual department and a twin trifecta exchange ticket and shall select the three (3) horses to finish in the second race of the twin trifecta in exact order as officially posted. Further money shall not be required of the holder of the winning ticket in order to make the exchange. Each association conducting the twin trifecta shall designate all windows to be used as exchange windows unless the first half payoff is \$900 or more in winnings (if such winnings are at least 300 times the amount of the single wager). If that occurs, valid exchange tickets shall be exchanged only at all windows designated IRS windows.

(10) A twin trifecta exchange ticket upon the second race of the twin trifecta shall not be issued except upon surrender of the winning twin trifecta ticket from the first race of the twin trifecta pursuant to subsection (9) of this section. Windows for the purpose of cashing and exchanging twin trifecta tickets shall be open only after the first race of the twin trifecta has been declared official and windows shall close when wagering closes for the race designated as the second half of the twin trifecta. More than one (1) race shall not elapse between the race designated the first half of the twin trifecta and the race designated as the second half of the twin trifecta.

(11) If a winning twin trifecta ticket from the first race is not presented for cashing and exchange with the time provided, the bettor may still collect the monetary value attached to the ticket but shall forfeit all rights to any distribution of the second race twin trifecta pool and the carry-over jackpot.

(12) If a horse is scratched from the first race of the twin trifecta, all twin trifecta tickets on the scratched horse shall be refunded. If a horse is scratched from the second race of the twin trifecta, public address announcements shall be made and a reasonable time shall be given for exchange of tickets on the scratched horse.

(13) If there is a dead heat in either the first or second half of the twin trifecta, all twin trifecta tickets selecting the correct order of finish counting a horse in a dead heat as finishing in any position dead heated shall be winning tickets. If there is a dead heat occurring in the first half, the payoff shall be calculated as a win pool. If there is a dead heat occurring in the second half, contrary to the usual pari-mutuel practice, the aggregate number of winning tickets shall be divided into the net pool and be paid the same payoff price.

(14) If there is no twin trifecta ticket issued accurately selecting the officially declared first three (3) finishers of the second race, the pool, as divided earlier, shall be held for the next consecutive program and combined with that program's second race twin trifecta pool. This sum shall be termed the "carry-over jackpot". Distribution

of the special cumulative second race twin trifecta pool shall be made only upon the accurate selection, in exact order, of the first three (3) officially declared finishers of the second twin trifecta race except on the closing program of the meeting pursuant to subsection (16) of this section.

(15) If for any reason the second half of the twin trifecta is not declared "official", the winning ticket holders who have cashed their tickets on the first half and have received an exchange ticket shall be entitled to the remaining amount of the current program's divided pool.

(16) On the closing program of the meeting, the current carry-over jackpot, if any, plus the second half pool for that program shall be combined and distributed in the following manner:

(a) The total twin trifecta pool shall be distributed to the holders of twin trifecta exchange tickets showing the first three (3) horses to finish, in exact order.

(b) If there are no twin trifecta exchange tickets showing the first three (3) horses, in the exact order, the payoff shall be made on twin trifecta exchange tickets selecting the first two (2) horses in exact order.

(c) If there is no twin trifecta exchange ticket showing the first two (2) horses in exact order, the first horse, and any ticket within the applicable above order of priority shall be deemed a winning ticket entitling the holder to the total twin trifecta pool.

(d) If there are no valid exchange ticket holders, the total twin trifecta pool shall be distributed to the holders of first half tickets selecting the first two (2) horses in the exact order.

(e) If there are no first half twin trifecta tickets showing the first two (2) horses, the total twin trifecta pool shall be distributed to the holders of first half tickets selecting the horse of the first half of the twin trifecta.

(f) If no ticket is sold that requires the distribution of the net pools as established by this subsection, the association shall equally distribute the total twin trifecta pool to all first half ticket holders.

(17) Sales of twin trifecta tickets other than from the association's ticket issuing machines or from one (1) individual to another shall be deemed illegal. Exchange tickets shall not be transferable. Persons involved in the unauthorized transfer of exchange tickets shall be ejected.

Section 11. Superfecta Wagering. (1) The superfecta shall be a contract by the purchaser of a ticket combining four (4) horses in a single race, selecting the four (4) horses that subsequently finish first, second, third, and fourth in that race.

(2) Payment of the ticket shall be made only to the purchaser who has selected the same order of finish as officially posted.

(3) The superfecta shall not be a parlay and shall not have a connection with or relation to the win, place, or show betting and shall be calculated as an entirely separate pool.

(4) Superfecta tickets shall not be sold in less than one (1) dollar denominations.

(5) If no ticket is sold on the winning combination of a superfecta pool, the net pool shall be distributed to the holders of tickets selecting the win, place, and show finishers in that order.

(a) If no ticket is sold combining the win, place, and show finish, the net pool shall be distributed to the holders of tickets selecting the win, and place finishers in that order.

(b) If no ticket is sold combining the win and place finish, the net pool shall be distributed to the holders of tickets selecting the winner.

(6) If no ticket is sold that requires distribution of the net superfecta pool to a winner pursuant to subsection (5) of this section, the association shall make a full refund of the superfecta pool.

(7) If there is a dead heat or dead heats, all superfecta tickets selecting the correct order of finish, counting a horse in a dead heat as finishing in either position dead heated, shall be winning tickets and the payoff shall be calculated as a place pool.

(8) If there is a scratch in the superfecta, exchanges shall not be made. All tickets which include the scratched horse shall be eliminated from further participation in the superfecta pool and shall be refunded.

(9) Those horses constituting an entry of coupled horses or those horses coupled to constitute the field in a race comprising

the superfecta shall race as a single wagering interest for the purpose of superfecta pari-mutuel pool calculations and payouts to the public.

(10) Superfecta tickets shall be sold only by the licensee through pari-mutuel machines programmed to print all sections on one (1) ticket. Resale of the tickets from one (1) individual to another shall be prohibited and shall be grounds for ejection.

(11) Each association shall print in heavy type in a conspicuous place in its printed program all the provisions of this section and post printed copies of this section about the track.

(12) For the purposes of superfecta wagering, the superfecta race shall be drawn to consist of eight (8) separate wagering interests.

(a) If a horse or horses are scratched from a superfecta race with the race now containing less than eight (8) separate wagering interests and wagering has not commenced, the superfecta pool shall be cancelled.

(b) If a horse or horses are scratched from a superfecta race and wagering has commenced, the superfecta pool shall remain until there are less than six (6) separate wagering interests.

(13) Nothing in this section shall preclude the sale of combination superfecta tickets in the amount of twenty-four (24) dollars.

Section 12. Pick-3 Wagering. (1) The Pick-3 pari-mutuel pool is not a parlay and has no connection with or relation to any other pari-mutuel pool conducted by the association, nor to any win, place, or show pool shown on the totalizer board, nor to the administrative regulation governing the distribution of the other pools.

(2) A valid Pick-3 ticket shall be evidence of a binding contract between the holder of the ticket and the racing association, and the ticket shall constitute an acceptance of Pick-3 provisions and administrative regulations.

(3) The Pick-3 pari-mutuel pool consists of amounts contributed for a selection for win only in three (3) consecutive races designated by the association with the approval of the Kentucky Racing Commission. Each person purchasing a Pick-3 ticket shall designate the winning horse in each of the three (3) races comprising the Pick-3.

(4) Those horses constituting an entry of coupled horses or those horses coupled to constitute the field in a race comprising the Pick-3 shall race as a single wagering interest for the purpose of the Pick-3 pari-mutuel pool calculations and pay-outs to the public. If any part of either entry or field racing as a single interest is a starter in a race, the entry or the field selection shall remain as the designated selection to win in that race for the Pick-3 calculation, and the selection shall not be deemed scratched.

(5) The net amount in the pari-mutuel pool subject to distribution among winning ticket holders shall be distributed among the holders of tickets which correctly designate the winners in all three (3) races comprising the Pick-3.

(6) If no ticket is sold combining the three (3) winners of the Pick-3, the net amount in the pari-mutuel pool shall be distributed among the holders of tickets which include the winners of at least two (2) of the three (3) races comprising the Pick-3.

(7) If no ticket is sold combining at least two (2) winners of the Pick-3, the net amount in the pari-mutuel pool shall be distributed among the holders of tickets which include the winner of any one (1) race comprising the Pick-3.

(8) If no ticket is sold that would require distribution of the Pick-3 pool to a winner pursuant to subsections (6) and (7) of this section, the association shall make a complete and full refund of the Pick-3 pool.

(9) If for any reason one of the races comprising the Pick-3 is cancelled, the net amount of the pari-mutuel pool shall be distributed as provided above in subsections (6), (7), and (8) of this section.

(10) If for any reason two (2) or more races comprising the Pick-3 are cancelled, a full and complete refund shall be made of the Pick-3 pool.

(11) If a Pick-3 ticket designates a selection in any one (1) or more races comprising the Pick-3 and that selection is scratched, excused, or determined by the judges or stewards to be a nonstarter in a race, the actual favorite, as evidenced by the amounts wagered in the final win pool of the race, shall be substituted for

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the nonstarting selection for all purposes, including pool calculations and payoffs. If the win pool total for two (2) or more favorites is identical, the substitute selection shall be the betting interest with the lowest program number.

(12) If there is a dead heat for win between two (2) or more horses in any Pick-3 race, all of the horses in the dead heat for win shall be considered as winning horses in the race for the purpose of calculating the pool.

(13) A pari-mutuel ticket for the Pick-3 shall not be sold, exchanged, or cancelled after the time of the closing of wagering in the first of the three (3) races comprising the Pick-3, except for refunds on Pick-3 tickets as required by this administrative regulation, and a person shall not disclose the number of tickets sold in the Pick-3 pool or the number of tickets selecting winners of Pick-3 races until the time that the judges or stewards have determined the last race comprising the Pick-3 to be official.

Section 13. Pick-4 Wagering. (1) The Pick-4 pari-mutuel pool is not a parlay and has no connection with or relation to any other pari-mutuel pool conducted by the association, nor to any win, place, or show pool shown on the totalizator board, nor to the rules governing the distribution of the other pools.

(2) A valid Pick-4 ticket shall be evidence of a binding contract between the holder of the ticket and the racing association, and the ticket shall constitute an acceptance of Pick-4 provisions and administrative regulations.

(3) The Pick-4 pari-mutuel pool consists of amounts contributed for a selection for win only in four (4) consecutive races designated by the association with the approval of the Kentucky Racing Commission. Each person purchasing a Pick-4 ticket shall designate the winning horse in each of the four (4) races comprising the Pick-4.

(4) Those horse constituting an entry of coupled horses or those horses coupled to constitute the field in a race comprising the Pick-4 shall race as a single wagering interest for the purpose of the Pick-4 pari-mutuel pool calculations and pay outs to the public. If any part of either entry or field racing as a single interest is a starter in a race, the entry or the field selection shall remain as the designated selection to win in that race for the Pick-4 calculation, and the selection shall not be deemed scratched.

(5) The net amount in the pari-mutuel pool subject to distribution among winning ticket holders shall be distributed among the holders of tickets which correctly designate the winners in all four (4) races comprising the Pick-4.

(6) If no ticket is sold combining the four (4) winners of the Pick-4, the net amount in the pari-mutuel pool shall be distributed among holders of tickets which include the winners of at least three (3) of the four (4) races comprising the Pick-4.

(7) If no ticket is sold combining at least three (3) winners of the pick-4, the net amount in the pari-mutuel pool shall be distributed among the holders of tickets which include the winners of at least two (2) of the four (4) races comprising the Pick-4.

(8) If no ticket is sold combining at least two (2) winners of the Pick-4, the net amount in the pari-mutuel pool shall be distributed among the holders of tickets which include the winner of any one (1) race comprising the Pick-4.

(9) If no ticket is sold that would require distribution of the Pick-4 pool to a winner pursuant to subsections (6), (7), and (8) of this section, the association shall make a complete and full refund of the Pick-4 pool.

(10) If for any reason one (1) of the races comprising the Pick-4 is cancelled, the net amount of the pari-mutuel pool shall be distributed as provided above in subsections (6), (7), (8), and (9) of this section.

(11) If for any reason three (3) or more races comprising the Pick-4 are cancelled, a full and complete refund will be made of the Pick-4 pool.

(12) If a Pick-4 ticket designates a selection in any one (1) or more races comprising the Pick-4 and that selection is scratched, excused, or determined by the judges or stewards to be a nonstarter in a race, the actual favorite, as evidenced by the amounts wagered in the final win pool of the race, shall be substituted for the nonstarting selection for all purposes, including pool calculations and payoffs. If the win pool total for two (2) or more favorites

are identical, the substitute selection shall be the betting interest with the lowest program number.

(13) If there is a dead heat for win between two (2) or more horses in any Pick-4 race, all of the horses in the dead heat for win shall be considered as winning horses in the race for the purpose of calculating the pool.

(14) A pari-mutuel ticket for the Pick-4 shall not be sold, exchanged, or cancelled after the time of the closing of wagering in the first of the four (4) races comprising the Pick-4, except for refunds on Pick-4 tickets as required by this administrative regulation, and a person shall not disclose the number of tickets sold in the Pick-4 pool or the number of tickets selecting winners of Pick-4 races until the time when the judges or stewards have determined the last race comprising the Pick-4 to be official.

Section 14. Pick-4 Wagering with Carryover. (1) The Pick-4 with a carryover abides by the same requirements as stated in Section 13 of this administrative regulation with the exception of how the payoff is calculated.

(2) The net amount of the pari-mutuel pool subject to distribution among winning ticket holders shall be distributed among the holders of tickets which correctly designate the winners of all four (4) races comprising the Pick-4.

(3) If no ticket is sold combining the four (4) winners of the Pick-4, then a designated percentage of the net pool shall be distributed as a single price pool to those who selected the first place finisher in the greatest number of Pick-4 races.

(4) The remainder of the net pool shall be added to the carryover. The carryover amount shall then be added to the Pick-4 pool the following race day.

(5) If there is no ticket sold combining the four (4) winners of the Pick-4 and it is the final race of the meet, the entire net pool shall be distributed as a single price pool to those who selected the first place finisher in the greatest number of races.

Section 15. The following types of wagering shall be permitted at all tracks given racing dates by the commission:

- (1) Normal win, place, and show betting on each race;
- (2) A daily double on the first and second race; and
- (3) Any other methods of betting approved in advance by the commission.

Section 16. Betting Interests Involving More than One (1) Horse. If two (2) or more horses entered for the same race are determined by the commission to have common ties through ownership and are joined by the commission as a mutuel entry, the mutuel entry shall become a single betting interest and a wager on one (1) horse in a mutuel entry shall be a wager on all horses in the same mutuel entry. If the number of horses competing in a race exceeds the numbering capacity of the totalizator, the racing secretary shall assign the highest pari-mutuel numbers to horses so that the highest numbered horse within the numbering capacity of the totalizator together with horses of higher numbers, shall be grouped in the mutuel field as a single betting interest, and a wager on one (1) horse in the mutuel field shall be a wager on all horses in the same mutuel field.

Section 17. Emergency Situation. If any emergency arises in connection with the operation of the pari-mutuel department not provided for by this administrative regulation, the pari-mutuel manager shall make an immediate decision and shall by the quickest means possible notify the presiding judge and render a full report to the commission.

Section 18. Incorporation by Reference. (1) "Race Track Pari-Mutuel and Admissions Report, 73A100", 7/00 is incorporated by reference.

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

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

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APPROVED BY AGENCY: July 20, 2010

FILED WITH LRC: July 20, 2010 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 29, 2010 at 10 a.m., in the clubhouse of The Red Mile, 1200 Red Mile Rd., Lexington, Kentucky 40504-2652. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by September 22, 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 September 30, 2010. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Timothy A. West

(I) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the regulatory framework that applies to all pari-mutuel wagering on live and historical horse races in the Commonwealth. It authorizes pari-mutuel wagering on historical horse races and requires the use of seed pools for such wagers. It establishes where, and under what circumstances, pari-mutuel wagering on live and historical horse races may take place. It places requirements on how winning pari-mutuel wagers shall be paid. It requires associations to maintain records regarding all pari-mutuel wagering at their facilities and to make them available to the commission on request. It establishes guidelines for the equipment used by the association to offer pari-mutuel wagering and provides requirements for the sale of pari-mutuel tickets. It establishes minimum wagers and payouts for pari-mutuel wagers on live and historical horse races.

(b) The necessity of this administrative regulation: This regulation is necessary for the commission to regulate the integrity of pari-mutuel wagering in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which standardbred racing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating mutuel wagering on horse races under the pari-mutuel system of wagering. This regulation establishes the regulatory framework that applies to all pari-mutuel wagering on live and historical horse races in the Commonwealth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which standardbred racing and pari-mutuel wagering thereon shall be conducted in the Commonwealth. This regulation provides the specific rules for pari-mutuel wagering on live and historical horse races in the Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: The existing regulation required updating to address certain innovations in pari-mutuel wagering. This amendment takes those innovations into account and incorporates them into the commission's regulatory framework. The amendment also addresses certain inconsistencies between the pari-mutuel regulations that govern thoroughbred, standardbred, and quarter horse/appaloosa/arabian racing (810 KAR 1:011, 811 KAR 1:125, and

811 KAR 2:060 respectively). To the extent possible, the amendment brings uniformity to the rules governing pari-mutuel wagering for the various breeds.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to address innovations in the way pari-mutuel wagering is offered and to bring uniformity among pari-mutuel wagering for thoroughbred, standardbred, and quarter horse/appaloosa/arabian racing. The amendment is also necessary to establish guidelines governing pari-mutuel wagering on historical horse races.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which horse racing and pari-mutuel wagering thereon shall be conducted in the Commonwealth. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating mutuel wagering on horse races under the pari-mutuel system of wagering. This amendment sets forth the requirements that apply to all pari-mutuel wagering on live and historical horse races in the Commonwealth.

(d) How the amendment will assist in the effective administration of the statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which standardbred racing and pari-mutuel wagering thereon shall be conducted in the Commonwealth. This amendment provides the specific rules for pari-mutuel wagering on live and historical horse races in the Commonwealth.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the eight currently-licensed racing associations in the Commonwealth, any applicant for the final racing association license, the owners and trainers who participate in racing in the Commonwealth, the jockeys who ride in the Commonwealth, the patrons who place pari-mutuel wagers on live and historical horse races in the Commonwealth, and the commission.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The licensed racing associations will be required to follow the procedure outlined in the regulation to offer any exotic wager that has not been previously approved by the commission. If an association requests and is granted permission by the commission to offer pari-mutuel wagering on historical horse races, then the association will be required to conduct such pari-mutuel wagering in a designated area (as defined in 811 KAR 1:005). The associations that offer pari-mutuel wagering on historical horse races will also be required to enter into an agreement with the Kentucky Harness Horsemen's Association regarding the allocation of the takeout between the association and the horsemen and file a memorandum with the commission outlining the terms 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): If an association requests and receives permission to offer pari-mutuel wagering on historical horse races, then the association will incur costs constructing or renovating a designated area (as defined in 811 KAR 1:005) to house the terminals. An association will also incur costs purchasing or leasing commission-approved terminals and hiring additional employees to staff the designated area and maintain the terminals. Any association offering pari-mutuel wagering on historical horse races will also be required to reimburse the commission pursuant to KRS 230.240 to cover the commission's increased regulatory costs relating to compensation of additional personnel and other expenses.

The total increase in the commission's regulatory costs will be based upon the number of associations that offer pari-mutuel wagering on historical horse races and the number of terminals at each association. The increased costs will likely include the addition of new employees and equipment. There will be no additional costs to owners, trainers, jockeys, or patrons placing pari-mutuel wagers.

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(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The associations will be able to offer increased pari-mutuel wagering options to patrons and can expect an increase in on-track attendance and total pari-mutuel handle. The increased revenue can be used to maintain and improve racing association facilities and supplement purses for live races run at each association. The increased purses will help the associations to compete with racing associations in neighboring states that offer expanded gaming options. The owners, trainers, and jockeys will benefit from increased purses, as well as any improvements to an association's facilities. The patrons will benefit from any improvements to an association's facilities as well as from increased pari-mutuel wagering options.

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

(a) Initially: See answer to question 4(b).

(b) On a continuing basis: With respect to pari-mutuel wagering on historical horse races, the commission anticipates that the first year such wagering is offered will see the greatest increase in regulatory costs. Thereafter, the commission expects the continuing costs to be mainly for employee compensation and expenses and equipment maintenance. The commission will be reimbursed by the associations for additional employee compensation and other expenses pursuant to KRS 230.240.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The commission will be reimbursed by the associations for additional employee compensation and other expenses pursuant to KRS 230.240.

(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 associations that request and receive permission to offer pari-mutuel wagering on historical horse races will be required to reimburse the commission for the cost of compensation of additional employees and other expenses pursuant to KRS 230.240.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The associations that request and receive permission to offer pari-mutuel wagering on historical horse races will be required to reimburse the commission for the cost of compensation of additional employees and expenses pursuant to KRS 230.240.

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to each association.

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 and the Department of Revenue.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215, 230.240, 230.260, 230.280, 230.290, 230.300, 230.310, 230.320, 230.361, 230.370.

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. The commission anticipates that its regulatory costs will increase based upon the associations offering pari-mutuel wagering on historical horse races. The increased costs will likely include the addition of new employees and equipment. The total increase will be based upon the number of associations that offer pari-mutuel wagering on historical horse races and the number of terminals at each association. The associations that offer pari-mutuel wagering on historical horse races will be required to reimburse the commission the costs associated with compensation of employees and other expenses pursuant to KRS 230.240. The Department of Revenue may have an increase in collection duties, but they are minimal and can be absorbed by the Department.

(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 amount of tax revenue generated is dependent upon the number of terminals the associations install and operate. While that number is unknown at this time, it is estimated that annual tax revenue will be somewhat less than \$1,000 per terminal.

(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? Based upon the experience of Oaklawn Park, the commission anticipates that revenue will more than double from the first to the second year, and more than triple from the second to the third year.

(c) How much will it cost to administer this program for the first year? The increased regulatory costs of the commission will be based upon the number of associations that offer pari-mutuel wagering on historical horse races and the number of terminals installed at each association.

(d) How much will it cost to administer this program for subsequent years? In subsequent years, the commission anticipates the costs largely to come from employee compensation and expenses and equipment maintenance. The commission will be reimbursed for these costs by the associations.

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)

811 KAR 2:010. Definitions.

RELATES TO: KRS ~~Chapter 230[230.610-230.770]~~

STATUTORY AUTHORITY: KRS ~~230.215, 230.225(7), 230.260, 230.370 [Chapter 13A]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) grants the commission the authority to regulate conditions under which quarter horse, appaloosa and Arabian racing shall be conducted in Kentucky. KRS 230.260(8) grants the commission the authority to prescribe necessary and reasonable administrative regulations and conditions under which horse racing at a horse race meeting shall be conducted in this state. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating mutuel wagering on horse races under the pari-mutuel system of wagering. This administrative regulation defines the terms used in 811 KAR Chapter 2.~~[To regulate conditions under which Arabian, quarter horse and appaloosa racing shall be conducted in Kentucky. The function of this administrative regulation is to define the terms used in the commission's rules and administrative regulations.]~~

Section 1. Definitions. ~~[The following words and phrases, irrespective of literal meaning as defined in recognized dictionaries, have assumed special meaning and connotations as used in racing, and in the context of these rules, shall be construed as having the following special meanings:]~~ (1) "Added money" means cash, exclusive of trophy or other award, added by the association to stake fees paid by subscribers to form the total purse for a stakes race.

(2) "Age" of a horse is reckoned as beginning on the first day of January in the year in which the horse is foaled.

(3) "Allowance race" means a race in which contestants receive weight allowance based on performance and/or winnings as stipulated in the conditions thereof.

(4) "Appaloosa horse" means a horse duly registered with the Appaloosa Horse Club, Inc., Moscow, Idaho.

(5) "Arabian horse" means a horse duly registered with the Arabian Horse Club Registry of America.

(6) "Arrears" means money due for entrance fees, jockey fees,

nomination or supplemental fees in stake races, fines, purchase money in claiming races, and any default ~~in any payment due~~ incidental to 811 KAR Chapter 2 ~~the rules and administrative regulations or conditions of a race~~.

(7) "Association" is defined by KRS 230.210(1) means any person, corporation, organization, or partnership licensed by the Kentucky Quarter Horse and Appaloosa Commission under KRS 230.420(2) and engaged in the conduct of a recognized Arabian, quarter horse or appaloosa race meeting.

(8) "Authorized agent" means an agent appointed by a notarized document signed by the owner or jockey and filed ~~ledged~~ annually with the ~~Secretary of the Kentucky Quarter Horse and Appaloosa Commission, or if a single meeting only with the secretary of the meeting, to be sent to the~~ commission.

(9) "Betting interest" means a single horse or more than one (1) horse joined as a ~~mutuel entry~~ or joined in the ~~mutuel field~~, on which a single pari-mutuel wager may be placed.

(10) "Bleeder" means any horse known to have bled internally or from its nostrils during a workout or race.

(11) "Breakage" means the net pool minus the payout.

(12) "Bred" means the place at which a horse is foaled.

(13) ~~(42)~~ "Breeder" of a horse is the owner of its dam at the time of service.

(14) "Calendar days" means consecutive days counted irrespective of number of racing days.

(15) "Carryover" means nondistributed pool monies which are retained and added to a corresponding pool in accordance with 811 KAR Chapter 2.

(16) ~~(43)~~ "Claiming race" means any race in which every horse running therein may be transferred in conformity with these rules.

(17) ~~(44)~~ "Closing" means time published by the association after which entries for a race will not be accepted.

(18) ~~(45)~~ "Commission" means the Kentucky Horse Racing Commission (formerly known as the Kentucky Horse Racing Authority and defined in KRS 230.210(2)) when used in the context of the administrative agency governing horse racing and pari-mutuel wagering; when used in the context of pari-mutuel wagering, means the amount an association is authorized to withhold from a pari-mutuel wager pursuant to KRS 230.3615 [the Kentucky Quarter Horse and Appaloosa Commission. "Commissioner" is a member of the commission].

(19) ~~(46)~~ "Corrupt practice" means [shall mean] any attempt to enrich oneself or one's associates or gain an advantage, through unfair, unlawful, or dishonest behavior in connection with the racing of horses.

(20) ~~(47)~~ "Day" means any twenty-four (24) hour period beginning at 12:01 a.m., and ending at midnight.

(21) "Dead heat" means a finish of a race in which the noses of two (2) or more horses reach the finish line at the same time.

(22) ~~["Racing day" is a day on which races are conducted. "Calendar days" are those consecutive days counted irrespective of number of racing days."~~

~~(48)~~ "Declaration" means withdrawal of a horse entered in a race prior to the time of closing of entries therefor in conformance with these rules.

(23) "Designated area" means any enclosed area that the commission has approved for the location of terminals used for wagering on an historical horse race.

(24) ~~(49)~~ "Directive" means an official order issued by the commission.

(25) "Disciplinary action" means action taken by the stewards or the commission for a violation of a statute or administrative regulation and can include, refusal to issue or renew a license, revocation or suspension of a license, imposition of probationary conditions on a license, issuance of a written reprimand or admonishment, imposition of fines or penalties, denial of purse money, forfeiture of purse money [(20) "Disciplinary action" means that taken by the stewards or the commission for a rule violation and can include suspension, revocation, voidance of a license or ejection or exclusion from association grounds, or assessment of a forfeiture, or reprimand], or any combination thereof.

(26) ~~(24)~~ "Disqualification" means an order of the stewards or commission revising the order of finish of a race.

~~(27)~~ ~~(22)~~ "Entry" means the act of nominating a horse for a race in conformance with these rules. ~~[(See "mutuel entry.")]~~

~~(28)~~ ~~(23)~~ "Equipment" means accoutrements ~~accoutrements~~ other than ordinary saddle, girth, pad, saddle cloth, and bridle carried by a horse, and includes whip, blinkers, tongue strap, muzzle, hood, noseband, bit, shadow roll, martingale, breast plate, bandages, boots, and racing plates or shoes.

~~(29)~~ ~~(24)~~ "Exhibition race" means a race between horses of diverse ownership for which a purse is offered by the association, but on which no pari-mutuel wagering is permitted.

(30) "Exotic wager" means any pari-mutuel wager placed on a live or historical horse race other than a win, place, or show wager placed on a live horse race.

(31) "Field" or "mutuel field" means a single betting interest involving more than one (1) horse which is not a mutuel entry.

~~(32)~~ ~~(25)~~ "Field or mutuel field" means a single betting interest involving more than one (1) horse formed when the number of horses starting in a race exceeds the numbering capacity of the totalizer, and the highest numbered horse within the numbering capacity of the totalizer and all horses of a higher number are grouped in the "mutuel field."

~~(26)~~ "Forfeit" means money due by a licensee because of an error, fault, neglect of duty, breach of contract, or alternative order of the stewards or commission.

~~(33)~~ ~~(27)~~ "Foul" means any action by any jockey that tends to hinder another jockey or any horse in the proper running of the race.

~~(34)~~ ~~(28)~~ "Handicap race" means a race in which the weights to be carried by the horses therein are assigned by the association handicapper with the intent of equalizing the chances of winning for all horses entered therein. A "free handicap" is a handicap for which no nominating fee is required to be weighted, but an entrance or starting fee may be required for starting therein.

(35) "Handle" means the aggregate of all pari-mutuel pools, excluding refundable wagers.

(36) "Historical horse race" means any horse race that was previously run at a licensed pari-mutuel facility located in the United States and that concluded with official results. An historical horse race must have concluded without scratches, disqualifications, or dead-heat finishes.

~~(37)~~ ~~(29)~~ "Horse" means a quarter horse, appaloosa, or [Arabian, quarter horse or appaloosa] registered as such with the American Quarter Horse Association in Amarillo, Texas, or the Appaloosa Horse Club, Inc., in Moscow, Idaho; and when used in these rules to designate any a quarter horse, appaloosa, or [Arabian, quarter horse or appaloosa] Arabian, ~~quarter horse or appaloosa~~ irrespective of age or sex designation.

~~(38)~~ ~~(30)~~ "Ineligible" means a horse or person not qualified under these rules or conditions of a race to participate in a specified racing activity.

(39) "Initial seed pool" means a nonrefundable pool of money funded by an association in an amount sufficient to ensure that a patron will be paid the minimum amount required on a winning wager on an historical horse race.

~~(40)~~ ~~(34)~~ "Jockey" means rider currently licensed to ride in races as a jockey, ~~or~~ amateur jockey, or a provisional jockey permitted by the stewards to ride in two (2) races prior to applying for a license.

~~(41)~~ ~~(32)~~ "Kentucky bred" is a foal dropped by a mare after being bred in Kentucky.

~~(42)~~ ~~(33)~~ "Kentucky race" means a race in which the contestants are Kentucky bred and foaled horses as stipulated in the conditions.

~~(43)~~ ~~(34)~~ "Lessee" means licensed owner whose interest in a horse is a leasehold.

(44) "Licensed premises" means the location and physical plant described in response to question P of the "Commonwealth of Kentucky Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, and Pari-Mutuel Wagering" filed for racing to be conducted in 2010. Licensed premises may also include real property of an association, if the association receives approval from the commission for a new location at which live racing will be conducted.

~~(45)~~ ~~(35)~~ "Licensee" means an individual, firm, association,

partnership, corporation, trustee, or legal representative ~~[person or association]~~ that has been duly issued a currently valid license to participate in racing in the [this] Commonwealth [by the Kentucky Quarter Horse and Appaloosa Commission].

(46)[(36)] "Maiden" is a horse which shows in the Daily Racing Form, the American Quarter Horse Chart Book or the Appaloosa Chart Book as never having won a race on a track recognized by the ~~[Kentucky Quarter Horse and Appaloosa]~~ commission. A maiden which has been disqualified after finishing first in a race is still a maiden.

(47)[(37)] "Match race" means a race between two (2) horses for which no other horses are eligible.

(48)[(38)] "Meeting" means the entire period of consecutive days, exclusive of Sundays and dark days, granted by the commission to a licensed association for the conduct of live horse racing, beginning at 10 a.m. of the first racing day and extending through a period ending one (1) hour after the last scheduled race of the last day. (See "recognized meeting.")

(49) "Minus pool" means a pari-mutuel pool in which the amount of money to be distributed on winning wagers exceeds the amount of money contained in the net pool.

(50)[(39)] "Month" means calendar month.

(51)[(40)] "Mutuel entry" means a single betting interest involving two (2) or more horses entered in the same race and joined for pari-mutuel purposes because of common ties as to ownership or training so that a wager on one (1) horse joined in a "mutuel entry" is a wager on all horses joined in the same "mutuel entry."

(52) "Net pool" means the total amount wagered less refundable wagers and takeout.

(53) [(41)] "Mutuel field" means the same as "field." (See subsection (24) of this section.)

(42) "Nomination fee". (See "subscription").

(54)[(43)] "Nominator" means any person in whose name a horse is entered for a stake race.

(55)[(44)] "Off time" is the moment at which, on signal of the starter, the horses break and run.

(56)[(45)] "Owner" means any person who holds, in whole or in part, any right, title, or interest in a horse, or any lessee of a horse, who has been duly issued a currently valid owner's license as a person responsible for such horse.

(57) "Pari-mutuel wagering", "mutuel wagering", or "pari-mutuel system of wagering" each mean a system or method of wagering approved by the commission in which patrons are wagering among themselves and not against the association and amounts wagered are placed in one (1) or more designated wagering pools and the net pool is returned to the winning patrons.

(58) "Patron" means an individual present at a track or a simulcast facility who observes or wagers on a live or historical horse race.

(59) "Payout" means the amount of the net pool payable to an individual patron on his or her winning wager.

(60)[(46)] "Place" when used in the context of a single position in the order of finish in a race, means second; when used in the context of pari-mutuel wagering, a "place" wager is one involving a payoff on a betting interest which finished first or second in a race; when used in the context of multiple positions in the order of finish in a race, "place or placing" means finishing first, or second, or third. (See also, "unplaced.")

(61)[(47)] "Post" means the starting point of a race.

(62)[(48)] "Post position" means the relative place assigned to each horse, numbered from the inner rail across the track at the starting line, from which each horse is to start a race.

(63)[(49)] "Post time" means the time set for the arrival at the starting point of the horses in a race.

(64)[(60)] "Prize" means the combined total of any cash, premium, trophy, and object of value awarded to the owners of horses according to order of finish in a race.

(65)[(61)] "Purse" means the gross cash portion of the prize for which a race is run.

(66)[(62)] "Purse race" means any race for which entries close at a time designated by the racing secretary [less than ninety-six (96) hours prior to its running], and for which owners of horses entered are not required by its conditions to contribute money toward its purse.

(67)[(53)] "Quarter horse" means a horse registered with the American Quarter Horse Association of Amarillo, Texas.

(68)[(54)] "Race" means a running contest between horses, ridden by jockeys, over a prescribed course free of obstacles or jumps, at a recognized meeting, during regular racing hours, for a prize.

(69)[(55)] "Race day" means any period of twenty-four (24) hours beginning at 12:01 a.m. and ending at midnight on which live racing is conducted by an association [midnight and included in the period of a race meeting].

(70)[(56)] "Racing official" means a racing commission member [commissioner], commission staff as duties require, and all association racing department employees, as duties require.

(71)[(57)] "Recognized meeting" means any race meeting conducted under jurisdiction of any legally constituted board or commission conducted with approval of the American Quarter Horse Association of Amarillo, Texas, or the Appaloosa Horse Club, Inc., of Moscow, Idaho.

(72)[(58)] "Recognized tracks" are those conducting recognized meetings.

(73)[(59)] "Registration certificate" means document issued by the American Quarter Horse Association of Amarillo, Texas, or the Appaloosa Horse Club, Inc., of Moscow, Idaho, certifying ~~[as to]~~ the name, age, color, sex, pedigree, and breeder of a horse as registered by number with the American Quarter Horse Association or the Appaloosa Horse Club.

(74) "Result" means the part of the official order of finish in a race used to determine the pari-mutuel payoff of pools.

(75)[(60)] "Ruled off" means denial of entrance to premises of any association under jurisdiction of the commission.

(76)[(61)] "Rules" when used in the plural, means [shall be deemed to mean] all current "rules" promulgated by the commission; when used in the singular means a specific numbered rule[; shall be deemed to be confined to the numbered "rule," and subparagraphs thereof, wherein such mention is made].

(77)[(62)] "Rulings" means all determinations, decisions, or orders of the stewards or of the commission duly issued in writing and posted.

(78)[(63)] "Schooling race" means a race designed to correct deficiencies in horses before being eligible for entry.

(79)[(64)] "Scratch" means withdrawal of a horse entered for a race after time of closing of entries therefor in conformance with these rules.

(80)[(65)] "Scratch time" means time set by the racing secretary as a deadline for horsemen to indicate their desire to scratch out of a race.

(81)[(66)] "Secretary" means duly appointed and currently serving secretary of the commission.

(82) "Seed pool" means a pool of money funded by patrons wagering on an historical horse race that is used to ensure that all patrons are paid the minimum payout on winning wagers.

(83)[(67)] "Specimen" means sample of blood, urine, or other biologic sample [saliva] taken or drawn from a horse for chemical testing.

(84)[(68)] "Stakes" mean all fees paid by subscribers to an added-money or stakes race for nominating, eligibility, entrance, or starting, as may be required by the conditions of such race, such fees to be included in the purse.

(85)[(69)] "Stakes race" means race which closes more than seventy-two (72) hours in advance of its running and for which subscribers contribute money towards its purse.

(86)[(70)] "Starter" means either: ["

(a) An official who dispatches the horses from the starting gate;

or
(b) A horse in a race when the starting gate doors open in front of it at the moment the starter dispatches the horses for the race.

(87) [is a starter when the stall doors of the starting gate open in front of it at the time the official starter dispatches the horses.

(74) "Steward[Stewards]" means a duly appointed racing official [officials] with powers and duties set out in 811 KAR 2:025[812 KAR 1:025] serving at a current meeting in the [this] Commonwealth.

(88)[(72)] "Subscription" means a fee to keep a horse eligible to run in a stake race.

~~(89)(73)~~ "Suspended" means withdrawal by the steward or commission of racing privileges.

~~(90)~~ "Takeout" means the total amount of money, excluding breakage and any amounts allocated to a seed pool, withheld from each pari-mutuel pool, as authorized by KRS 230.3615 and 811 KAR Chapter 2.

~~(91)~~ "Terminal" means any self-service totalizator machine or other mechanical equipment used by a patron to place a pari-mutuel wager on a live or historical horse race.

~~(92)~~ "Totalizator" means the system, including hardware, software, communications equipment, and electronic devices that accepts and processes the cashing of wagers; calculates the odds and prices of such wagers; and records, displays, and stores pari-mutuel wagering information.

~~(93)(74)~~ "Tote" or "[t]ote board[]" means the totalizator.

~~(94)(75)~~ "Trial race" means [is] a race designed primarily to determine the class of competing horses. A trial may be run as a purse race or stakes, or it may be run as a "time trial" with no purse at all. Whenever a trial is run for a purse or stakes so small that the value to the winner is less than fifty (50) dollars, the winning of the race shall not be counted against the winner in calculating the weight he must carry under the conditions of a subsequent race.

~~(95)(76)~~ "Unplaced" means a horse finishing a race outside the pari-mutuel payoff [not among the first three (3) horses finishing a race].

~~(96)(77)~~ "Walkover" means race in which the only starter or all starters represent single ownership.

~~(97)(78)~~ "Weigh in" means presentation of a jockey to the clerk of scales for weighing after a race.

~~(98)(79)~~ "Weigh out" means presentation of a jockey to the clerk of scales for weighing prior to a race.

~~(99)(80)~~ "Weight" means the number of pounds carried or to be carried in a race and includes the jockey, his silks, breeches, and boots, saddle, pad and cloth but excludes the protective helmet, whip, and bridle.

~~(100)(84)~~ "Workout" means training exercise of a horse on the training track or main track of an association during which such horse is timed for speed over a specified distance.

~~(102)(82)~~ "Year" means twelve (12) consecutive months beginning with January and ending with December.

Section 2. Severability. In the event that any provision or administrative regulation of this chapter is found to be invalid, the remaining provisions of this chapter shall not be affected nor diminished thereby.

ROBERT M. BECK, JR., Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: July 20, 2010

FILED WITH LRC: July 20, 2010 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 29, 2010 at 10 a.m., in the clubhouse of The Red Mile, 1200 Red Mile Rd., Lexington, Kentucky 40504-2652. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by September 22, 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 September 30, 2010. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Timothy A. West

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation defines the terms that are used in the commission's administrative regulations.

(b) The necessity of this administrative regulation: The regulation is necessary to provide specific and updated definitions of terms used in the commission's administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which thoroughbred racing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating mutuel wagering on horse races under the pari-mutuel system of wagering.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which thoroughbred racing and pari-mutuel wagering thereon shall be conducted in the Commonwealth. This regulation provides specific and updated definitions for the terms used in the commission's administrative regulations.

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

(a) How the amendment will change this existing administrative regulation: The amendment modifies some existing definitions and adds new definitions to account for recent innovations in horse racing and pari-mutuel wagering.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to address innovations in horse racing and pari-mutuel wagering.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which horse racing and pari-mutuel wagering thereon shall be conducted in the Commonwealth. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating mutuel wagering on horse races under the pari-mutuel system of wagering. This regulation provides specific and updated definitions of terms used in the commission's administrative regulations.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation provides specific and updated definitions of terms used in the commission's administrative regulations.

(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 all persons and entities involved in horse racing and pari-mutuel wagering on horse racing 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: No actions are necessary.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will give greater guidance to participants in horse racing by providing specific and updated definitions of terms used in the commission's administrative regulations.

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

(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: N/A

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation:

tion, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees have been established or increased as a result of this administrative regulation.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215, 230.260, 230.361, 230.370.

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. This regulation will have no effect on the expenditures and revenues of any state or local 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? This regulation will have no effect on the expenditures and revenues of any state or local government agency.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will have no effect on the expenditures and revenues of any state or local government agency.

(c) How much will it cost to administer this program for the first year? There will be no administrative costs as a result of this regulation.

(d) How much will it cost to administer this program for subsequent years? There will be no administrative costs as a result of this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amendment)**

811 KAR 2:060. Pari-mutuel wagering.

RELATES TO: KRS 230.210-230.375, 230.990~~[230.640-230.770]~~

STATUTORY AUTHORITY: KRS 230.215, 230.240, 230.260, 230.280, 230.290, 230.300, 230.310, 230.320, 230.361, 230.370~~[43A.040 et seq.]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) grants the commission the authority to regulate conditions under which quarter horse, appaloosa and arabian racing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.361(1) requires the authority to promulgate administrative regulations governing and regulating mutuel wagering on horse races under the pari-mutuel system of wagering. This administrative regulation establishes the requirements for the operation of pari-mutuel wagering under KRS Chapter 230 and 811 KAR Chapter 2.~~[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 requirements for the operation of pari-mutuel wagering.]~~

Section 1. Pari-Mutuel System of Wagering Required. (1) The only wagering permitted on a live or historical horse race shall be under the pari-mutuel system of wagering. All systems of wagering other than pari-mutuel shall be prohibited. Any person participating or attempting to participate in prohibited wagering shall be ejected and excluded from association grounds.

(2) Wagering conducted in conformity with KRS Chapter 230 and 811 KAR Chapter 2 is pari-mutuel.

Section 2. Totalizator or Other Approved Equipment Required.

(1) Pari-mutuel wagering on live and historical horse races shall only be conducted through the use of a totalizator or other similar mechanical equipment approved by the commission pursuant to KRS 230.361. The commission shall not require any particular make of equipment.

(2) The totalizator or other mechanical equipment shall be available for testing under the supervision of the commission upon request to ensure its proper working order.

Section 3. Wagering on an Historical Horse Race Authorized.

(1) Wagering on an historical horse race is hereby authorized and may be conducted in accordance with KRS Chapter 230 and 811 KAR Chapter 2.

(2) Wagering on an historical horse race shall only be conducted by:

(a) An association licensed to conduct a live horse race meet; or (b) Two (2) or more associations licensed to conduct a live horse race meet who form a joint venture or otherwise pursuant to an agreement between them.

(3) Wagering on an historical horse race shall only be permitted in a designated area on the licensed premises of an association licensed to conduct a live horse race meeting. Wagering on historical horse racing shall not be offered in any other location.

(4) An association may conduct wagering on historical horse races of any horse breed regardless of the type of breed that primarily races in live meets conducted by the association. An association may conduct wagering on historical races on any days and hours approved by the commission, and shall not be limited to times during which the association is conducting a live horse race meeting.

(5) Any wager placed on an historical horse race is an exotic wager.

(6) Before offering wagering on an historical horse race, an association shall first obtain the commission's written approval of all wagers offered as set forth in 811 KAR 2:160.

(7) All wagering on an historical horse race shall incorporate the following elements:

(a) A patron may only wager on an historical horse race on a terminal approved by the commission;

(b) An association shall at all times maintain at least two (2) terminals offering each type of exotic wager on an historical horse race;

(c) Once a patron deposits the wagered amount in the terminal offering wagering on an historical horse race, an historical horse race shall be chosen at random;

(d) Prior to the patron making his or her wager selections, the terminal shall not display any information that would allow the patron to identify the historical race on which he or she is wagering, including the location of the race, the date on which the race was run, the names of the horses in the race, or the names of the jockeys that rode the horses in the race;

(e) The terminal shall make available true and accurate past performance information on the historical horse race to the patron prior to making his or her wager selections. The information shall be current as of the day the historical horse race was actually run. The information provided to the patron shall be displayed on the terminal in data or graphical form; and

(f) After a patron finalizes his or her wager selections, the terminal shall display a video replay of the race, or a portion thereof, and the official results of the race. The identity of the race shall be revealed to the patron after the patron has placed his or her wager.

Section 4. Payouts Only Out of Pari-Mutuel Pools: Seed Pools Required. (1)(a) A wager on an historical horse race, less deduc-

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tions permitted by KRS Chapter 230 or these administrative regulations, shall be placed in pari-mutuel pools approved by the commission.

(b) A payout to a winning patron shall be paid from money wagered by patrons and shall not constitute a wager against the association.

(c) An association conducting wagering on an historical horse race shall not conduct wagering in such a manner that patrons are wagering against the association, or in such a manner that the amount retained by the association as a commission is dependent upon the outcome of any particular race or the success of any particular wager.

(2) An association shall only pay a winning wager on an historical horse race out of the applicable pari-mutuel pool and shall not pay a winning wager out of the association's funds. In no event shall payment of a winning wager exceed the amount available in the applicable pari-mutuel pool.

(3) An association offering wagering on an historical horse race shall operate seed pools in a manner and method approved by the commission. For each wager made, an association may assign a percentage of the wager to seed pools. The seed pools shall be maintained and funded so that the amount available at any given time is sufficient to ensure that a patron will be paid the minimum amount required on a winning wager.

(4) An association shall provide the funding for the initial seed pool for each type of exotic wager. The funding for the initial seed pool shall be nonrefundable and in an amount sufficient to ensure that a patron will be paid the minimum amount required on a winning wager.

Section 5. Location of Terminals Used for Wagering on an Historical Horse Race. (1) Terminals offering wagering on historical horse races shall be located within designated areas which have the prior written approval of the commission. Designated areas shall be established in such a way as to control access by the general public and prevent entry by any patron who is under eighteen (18) years of age or is otherwise not permitted to place wagers on an historical horse race.

(2) Each association shall be responsible for monitoring persons entering and leaving the designated areas and shall be responsible for preventing access to any patron who is under eighteen (18) years of age or is otherwise not permitted to place wagers on historical horse races.

(3) Each association shall provide terminals that are accessible to handicapped patrons.

Section 6. Records to be Maintained. (1) Each association and each simulcast facility authorized under KRS 230.380 shall maintain complete records of all pari-mutuel wagering transactions on live and historical horse races, including the amounts wagered at each betting window, self-service totalizator, mobile pari-mutuel teller, and terminal.

(2) A copy of the wagering records shall be retained and safeguarded for a period of not less than two (2) years and shall not be destroyed without the prior written permission of the commission.

Section 7. Equipment. (1) The association and the totalizator provider shall install a primary and secondary device, which activate the stop betting function of the totalizator system. The chief state steward, or his or her designee, shall use the primary device to stop wagering at the start of the race. In the event that wagering is not stopped by the primary device at the start of the race, the totalizator operator shall stop wagering using the secondary device. The secondary device shall be installed in the totalizator room and shall only be used by the totalizator operator.

(2) If there is a complete breakdown of the totalizator or mechanical equipment during the wagering on a live horse race, the wagering on that race shall be declared closed. If the totalizator remains capable of computing payouts, the payouts for that race shall be computed based on the amounts wagered prior to the breakdown. If the totalizator is incapable of computing payouts, then refunds shall be issued for all amounts wagered on that race.

(3) If there is a complete breakdown of a terminal offering wagering on an historical horse race, the association offering the

wager shall make a full refund of the patron's balance on the terminal at the time of the breakdown.

Section 8. Entries in a Live Horse Race. (1) The chief state steward shall timely advise an association's pari-mutuel manager, prior to the beginning of wagering on each race, of the horses that will compete in the race.

(2) If two (2) or more horses entered for the same live horse race are determined by the commission to have common ties through ownership or training they may be joined by the commission as a mutuel entry. The mutuel entry shall become a single betting interest and a wager on one (1) horse in a mutuel entry shall be a wager on all horses in the same mutuel entry. If the number of horses competing in a live horse race exceeds the numbering capacity of the totalizator, the racing secretary shall assign the highest pari-mutuel numbers to horses so that the highest numbered horse within the numbering capacity of the totalizator together with horses of higher numbers, shall be grouped in the mutuel field as a single betting interest, and a wager on one (1) horse in the mutuel field shall be a wager on all horses in the same mutuel field.

(3) A refund at cost value shall be made to all holders of a purchased ticket bearing the number of a horse in any race that has been scratched or withdrawn before the horse has become a starter, unless the horse is part of a mutuel entry, and one (1) or more of the entry starts.

Section 9. Sale of Pari-Mutuel Tickets on Live Horse Races. (1) The following types of pari-mutuel wagering shall be permitted on a live horse race at all licensed associations and simulcast facilities:

(a) Normal win, place, and show wagers on each race;
(b) Any exotic wager previously approved by the commission; and

(c) Any new exotic wager approved in writing by the commission.

(2) Pari-mutuel tickets on live horse races shall not be sold except by a licensed association or a simulcast facility authorized by KRS 230.380.

(3) Pari-mutuel tickets on a live horse race shall only be sold at regular ticket windows, self-service totalizator machines, by mobile pari-mutuel tellers with hand-held totalizator devices, or by any other method approved in writing by the commission prior to being offered to the public. At least one (1) regular ticket window shall be made accessible to handicapped patrons.

(4)(a) Pari-mutuel stored value cards or cash vouchers may be offered by an association. The dollar amount on the stored value card or cash voucher may be redeemed at any time at any regular ticket window or used to fund additional wagers.

(b) Cash vouchers shall be valid for one (1) year after the date of issuance. Failure to present any cash voucher for redemption within one (1) year of issuance shall constitute a waiver of the right to receive payment thereon.

(5) No pari-mutuel wager shall be made on a race after the totalizator has been locked for that race.

(6) Any claim by a patron that he or she has been issued a pari-mutuel ticket other than that which was requested shall be made before the patron has left the ticket window or before the mobile teller has initiated a transaction with another patron. No claims for incorrect tickets will be honored after the totalizator has been locked.

Section 10. Payment on Pari-Mutuel Tickets on Live Horse Races. (1) At the end of each race, the placing judges shall advise the manager of the pari-mutuel department by the use of the totalizator equipment or by telephone of the official placement of the horses, and no payouts shall be made until the receipt of the notice.

(2) Payment of valid pari-mutuel tickets shall be made on the basis of the order of finish as declared "official" by the stewards. A subsequent change in the order of finish or award of purse money that may result from a subsequent ruling by the stewards or commission shall not affect the pari-mutuel payout.

(3) Each association shall deduct from each pari-mutuel pool a

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commission, not exceeding the commission provided by KRS 230.3615. The remainder of the pool after the deduction of the commission shall be the net pool for distribution as payouts to ticket holders.

(4) Payment on valid pari-mutuel tickets shall be made only if presented and surrendered within one (1) year following the running of the live horse race on which the wager was made. Failure to present any such ticket within one (1) year shall constitute a waiver of the right to receive payment thereon.

(5) The association shall be responsible for the correctness of all payout prices posted as "official". If an error is made in posting the payout figures, and ascertained before any tickets are cashed thereon, the posting error shall be corrected, accompanied by a public address announcement, and only the correct amounts shall be used in the payout, irrespective of the initial error.

(6) A mutilated pari-mutuel ticket that is not easily identifiable as being a valid ticket shall not be accepted for payment.

(7) An association shall establish a written procedure for granting patrons an opportunity to file a claim on a lost pari-mutuel ticket and provide a copy to the commission.

(8) Prior to posting payouts, the association's pari-mutuel manager shall require the verification of the winning runners and prices prior to posting official results.

(9)(a) If an error is made in calculating the payout on a winning wager, resulting in overpayment, the association shall be responsible for the amount between the correct payout and the amount paid.

(b) If the error in calculation results in a payout being too low, the amount between the correct payout and the amount paid shall be added to the net pool of the same position in the following race on the same day or, if it is the last race of the day, then it shall be added to the net pool of the same position in the same race on the following day. If an error occurs in computing the daily double pool, the underpayment shall be added to the daily double pool of the following day.

(c) If an error occurs causing underpayment on the last race of the entire racing meeting, the amount of the underpayment shall be paid to the Kentucky Revenue Cabinet.

Section 11. Minimum Wagers and Payouts. (1) The minimum wager to be accepted by any licensed association on a live horse race shall be ten (10) cents. The minimum payout on a one (1) dollar wager on a live horse race shall be one dollar and ten (10) cents, unless a minus pool occurs. If a minus pool occurs, the minimum payout for a one (1) dollar wager shall be one (1) dollar and five (5) cents.

(2) The minimum wager to be accepted by any licensed association on an historical horse race shall be ten (10) cents. The minimum payout on any wager shall not be less than the amount wagered.

Section 12. Minors Prohibited from Wagering. A minor shall not be permitted by any licensed association or simulcast facility to purchase or cash a pari-mutuel ticket.

Section 13. Odds and Payouts Posted. (1) Approximate odds for live horse races, based on win pool betting for finishing first for each betting interest, shall be posted on one (1) or more boards or television screens within view of the wagering public at intervals of not more than ninety (90) seconds.

(2) If daily double wagering is conducted on a live horse race, before off-time of the second daily double race, the probable payout for each two (2) dollar daily double wager combining the winner of the first daily double race with every horse or betting interest in the second daily double race shall be posted; except that if a dead heat for first in the first daily double race occurs, or a scheduled starter in the second daily double race is excused so as to cause a consolation daily double pool, then posting of all possible payouts shall not be mandatory, but the association shall make every effort to compute such daily double prices and advise the public by posting or public address announcement as soon as possible and prior to the running of the second daily double race.

(3) For wagering on an historical horse race, approximate odds or payouts for each wagering pool shall be posted on each terminal

for viewing by patrons at intervals of no more than ninety (90) seconds.

Section 14. Betting Explanation. (1) Each association shall publish in the daily race program, for each day of live horse racing, a general explanation of pari-mutuel wagering offered on live horse races and an explanation of each type of betting pool offered. The explanation also shall be posted in conspicuous places about the association grounds to adequately inform the public and shall be submitted to the commission prior to publication for approval.

(2) Each association shall post, in conspicuous places in the designated area, a general explanation of pari-mutuel wagering offered on historical horse races and an explanation of each betting pool offered. The explanation shall be submitted to the commission for approval prior to its posting.

Section 15. Prior Approval Required for Number of Live Horse Races. Each association desiring to conduct more than nine (9) live horse races on a single day shall first apply in writing to the commission and obtain specific approval of the number of live horse races to be offered on a single day.

Section 16. Pools Dependent Upon Entries for Live Horse Races. (1) If horses representing five (5) or fewer betting interests qualify to start in a live horse race, the association may prohibit show wagering on that race. If horses representing four (4) or fewer betting interests qualify to start in a live horse race, the association may prohibit both place and show wagering on that race.

(2) If a horse is scratched by the stewards after wagering has commenced or a horse is prevented from running in a live horse race because of failure of a starting-gate door to open properly, and the number of actual starters representing different betting interests is:

(a) Reduced to five (5), the association may cancel show wagering on that race and the entire show pool shall be refunded upon presentation and surrender of show tickets; or

(b) Reduced to four (4) or fewer, the association may cancel both place and show wagering on that race and the entire place and show pool shall be refunded upon presentation and surrender of place and show tickets.

Section 17. Emergency Situation. If any emergency arises in connection with the operation of the pari-mutuel department not provided for by this administrative regulation, the pari-mutuel manager shall take immediate corrective action and shall by the quickest means possible notify the chief state steward and render a full report to the commission.

Section 18. Severability. In the event that any provision or administrative regulation of this chapter is found to be invalid, the remaining provisions of this chapter shall not be affected nor diminished thereby. [Section 4. Pari-mutuel System of Wagering Required. With the approval of the commission, each association licensed to conduct racing in this state may permit wagering on races conducted by such association on the grounds of such association; an association may accept wagers on races conducted elsewhere by another association. All such permitted wagering shall be under the pari-mutuel system, employing an electric totalizer approved by the commission. All systems of wagering other than pari-mutuel, such as bookmaking and auction pool selling, are prohibited and any person participating or attempting to participate in prohibited wagering shall be ejected or excluded from association grounds.]

Section 2. Totalizer Required. Each association shall install and operate during its race meeting an electric totalizer approved by the commission. Such totalizer shall be tested daily under the supervision of the commission to insure its proper working order.

Section 3. Records to be Maintained. The pari-mutuel manager shall maintain complete records of all wagering so the commission may upon review ascertain for any race: the opening line and subsequent odds fluctuations, the amount, and at which window, wagers were placed on any betting interest, and such other information

as the commission may from time to time require. A copy of such wagering records shall be retained by each association and safeguarded for a period not less than two (2) years and may not be destroyed without permission of the commission.

Section 4. Calculation and Distribution of Pools. The only pari-mutuel wagering pools permitted in this state shall be for win, place, show, daily double, exacta, trifecta, twin trifecta, and quiniela, each with separate and independent calculation and distribution. From each pool there shall be deducted by each association the commission as provided by KRS 138.515, with the remainder being the net pool for distribution as payoffs to ticket holders as follows:

(1) **Win pool.** The amount wagered on the horse or betting interest which finished first is deducted from the net pool, the balance remaining being the profit; the profit is divided by the amount wagered on the horse or betting interest finishing first, such quotient being the profit per dollar wagered to win; payoff includes return of amount wagered and profit thereon.

(a) In the event of a dead heat for first involving horses of two (2) different betting interests, the win pool is distributed as if a place pool; if involving horses of three (3) different betting interests, the win pool is distributed as if a show pool.

(b) In the event no win ticket is sold on the horse which finishes first, the net in pool is distributed to holders of win tickets on the horse finishing second.

(2) **Place pool.** The amounts wagered to place on the first two (2) horses to finish are deducted from the net pool to determine the profit; the profit is divided into two (2) equal amounts; one-half (1/2) of the profit is divided by the amount wagered to place on the first finisher, such quotient being the profit per dollar wagered to place on the first finisher; and one-half (1/2) of the profit is divided by the amount wagered to place on the second finisher, such quotient being the profit per dollar wagered to place of such second finisher; payoffs include return of amount wagered and profit thereon as to each of the first two (2) finishers.

(a) In the event of a dead heat for first: between horses representing the same betting interest, the place pool is distributed as if a win pool; if between horses representing two (2) different betting interests, the place pool is distributed as if one (1) betting interest finished first and the other finished second; if between horses representing three (3) different betting interests, the place pool is distributed as if a show pool.

(b) In the event of a dead heat for second: between horses representing the same betting interest, the place pool is distributed as if no dead heat occurred; if between horses representing two (2) or more different betting interests, the profit is divided in half, with one-half (1/2) allocated for wagers to place on the horse which finished first, and other half divided equally so as to allocate one-fourth (1/4) of the profit on the net place pool for wagers to place on each of two (2) horses finishing in a dead heat for second, or one-sixth (1/6) of the profit for wagers to place on each of three (3) horses finishing in a dead heat for second.

(c) In the event the first and second finishers comprise a single betting interest, the place pool is distributed as if a win pool.

(d) In the event no place ticket is sold on a horse which finishes first or second, then the horse which finished third shall replace that horse in the distribution of wagers in the place pool.

(3) **Show pool.** The amounts wagered to show on the first three (3) horses to finish are deducted from the net pool to determine the profit; the profit is divided into three (3) equal amounts; one-third (1/3) of the profit is divided by the amount wagered to show on the first finisher, such quotient being the profit per dollar wagered to show on the second finisher, such quotient being the profit per dollar wagered to show on such second finisher; and one-third (1/3) of the profit is divided by the amount wagered to show on the third finisher, such quotient being the profit per dollar wagered to show on such third finisher; payoffs include return of amount wagered and profit thereon as to each of the first three (3) finishers.

(a) In the event of a dead heat for first: between two (2) horses involving different betting interests, or three (3) horses involving three (3) different betting interests, the show pool is distributed as if no dead heat occurred; if between two (2) horses involving the

same betting interest two-thirds (2/3) of the profit is allocated to wagers to show on the coupled betting interest, and one-third (1/3) allocated to wagers to show on the other horse among the first three (3) finishers; if between three (3) horses involving one (1) betting interest, the show pool is distributed as if a win pool.

(b) In the event of a dead heat for second: between two (2) horses involving two (2) different betting interests, the show pool is distributed as if no dead heat occurred; if between horses involving the same betting interest, two-thirds (2/3) of the profit shall be allocated to wagers to show on the coupled betting interest, and one-third (1/3) allocated to wagers to show on the horse finishing first; if between three (3) horses involving two (2) or three (3) betting interests, one-third (1/3) of the profit is allocated to wagers to show on the horse finishing first, and the remaining two-thirds (2/3) of the profit is divided equally by the number of betting interests finishing in a dead heat for second for proportionate distribution on wagers to show for each such betting interest finishing in a dead heat for second.

(c) In the event of a dead heat for third: between horses involving the same betting interests, the show pool is distributed as if no dead heat occurred; if between horses involving two (2) or more betting interests, two-thirds (2/3) of the profit shall be allocated to wagers to show on the first two (2) finishers, and the remaining one-third (1/3) is divided equally by the number of betting interests finishing in a dead heat for third for proportionate distribution on wagers to show for each such betting interest finishing in a dead heat for third.

(d) In the event the first three (3) horses to finish comprise one (1) betting interest, the show pool shall be distributed as a win pool. In the event two (2) horses coupled as a single betting interest finish first and second, or first and third, or second and third, two-thirds (2/3) of the profit shall be allocated to wagers to show on the other horse among the first three (3) finishers.

(e) In the event one (1) horse coupled in the betting by reason of being in the mutuel field or part of a mutuel entry finishes first or second, and another horse included in the same betting interest finishes in a dead heat for third; one-half (1/2) of the profit in the show pool shall be allocated to wagers on such field or entry, one-third (1/3) of the profit in the show pool shall be allocated to wagers on the horse finishing first or second, and the remaining one-sixth (1/6) of such profit shall be allocated to wagers on the horse finishing in a dead heat for third with such field or entry.

(f) In the event only two (2) horses finish, the show pool, if any, shall be distributed as if a place pool; if only one (1) horse finishes, the place and show pools, if any, shall be distributed as if a win pool; if no horse finishes, all money wagered on such race shall be refunded upon presentation and surrender of pari-mutuel tickets sold thereon. In the event no show ticket is sold on a horse which finishes first, or second, or third, then, the horse which finished fourth shall replace that horse in the distribution of wagers in the show pool.

(4) **Daily double pool.** The amount wagered on the winning combination, such being the horse or betting interest which finishes first in the first daily double race, is deducted from the net pool to determine the profit; the profit is divided by the amount wagered on the winning combination, such quotient being the profit per dollar wagered on the winning daily double combination; payoff includes the amount wagered and profit thereon.

(a) In the event of a dead heat for first involving two (2) different betting interests, in one (1) of the two (2) daily double races, the daily double pool is distributed as if a place pool, with half the profit allocated to wagers combining the single winner of one (1) daily double race and one (1) of the betting interests involved in the dead heat in the other daily double race, with the other half of the profit allocated to wagers combining the single winner of one (1) daily double race and the other betting interest involved in the dead heat in the other daily double race.

(b) In the event of dead heats for first involving different betting interests in each of the daily double races, resulting in four (4), or six (6), or nine (9), winning combinations for proportionate allocation for each such winning daily double wager.

(c) In the event no daily double ticket is sold combining the horse or betting interest which finishes first in one (1) of the daily double races, the daily double pool is distributed as if win pool with

the profit allocated to wagering combinations which include the horse or betting interest which finished first in one (1) of the daily double races.

(d) In the event no daily double ticket is sold combining the horses or betting interests which finished first in both the first and second race of the daily double, then the winning combination for distribution of the daily double profit shall be that combining the horses or betting interests which finished second in each of the daily double races.

(e) If after daily double wagering has commenced and a horse not coupled with another as a betting interest in the first race of the daily double is excused by the stewards or is prevented from racing because of failure of the starting gate to open properly, then daily double wagers combining such horse shall be deducted from the daily double pool and refunded upon presentation and surrender of daily double tickets thereon.

(f) If, prior to closing of the daily double wagering, a scheduled starter in the second half of the daily double which is not coupled in the betting with another horse is excused by the stewards, then daily double wagers combining such horse shall be deducted from the daily double pool and refunded upon presentation and surrender of daily double tickets thereon.

(g) If after the first race of the daily double has been run, and a horse not coupled with another as a betting interest in the second race of the daily double is excused by the stewards or prevented from racing because of failure of the starting gate door to open properly, then daily double wagers combining the winner of the first daily double race with such horses prevented from racing in the second daily double race shall be allocated consolation payoffs:

1. Consolation daily double payoffs shall be determined by dividing the net daily double pool by the amount wagered combining the winner of the first daily double race with every horse or betting interest scheduled to start in the second daily double race; such quotient being the consolation payoff per dollar wagered combining the winner of the first daily double race with such horse prevented from racing in the second daily double race;

2. Such consolation payoffs shall be deducted from the net daily double pool before calculation and allocation of wagers on the winning daily double combination.

(h) If for any reason the first daily double race is cancelled or declared "no race" by the stewards, then the entire daily double pool shall be refunded upon presentation and surrender of daily double tickets thereon. If for any reason the second daily double race is cancelled or declared "no race" by the stewards after the first daily double race is declared official, then the net daily double pool shall be distributed to wagering combinations which include the horse or betting interest which finished first in the first daily double race.

(i) If no daily double ticket is sold requiring distribution, then the entire daily double pool shall be refunded upon presentation and surrender of daily double tickets thereon.

(5) Quinella pool. The amount wagered on the winning combination, such being the first two (2) finishers irrespective of which horse finishes first and which horse finishes second, is deducted from the net pool to determine the profit; the profit is divided by the amount wagered on the winning combination, such quotient being the profit per dollar wagered on the winning quinella combination; payoff includes the amount wagered and profit thereon.

(a) In the event of a dead heat for first: between horses involving two (2) different betting interests, the net quinella pool is distributed as if no dead heat occurred; if between horses involving three (3) different betting interests, the net quinella pool is distributed as if a show pool and is allocated to wagers combining any of the three (3) horses finishing in a dead heat for first.

(b) In the event of a dead heat for second: between horses involving two (2) different betting interests, the net quinella pool is distributed as if a place pool and is allocated to wagers combining the first finisher with either horse finishing in a dead heat for second; if between horses involving three (3) different betting interests, the net quinella pool is distributed as if a show pool, and allocated to wagers combining the first horse with each of the three (3) horses finishing in a dead heat for second.

(c) In the event horses representing a single betting interest finish first and second, the net quinella pool shall be allocated to

wagers combining such single betting interest with the horse or betting interest which finishes third.

(d) In the event no quinella ticket is sold combining:

1. The first finisher with one (1) of the horses finishing in a dead heat for second, then the net quinella pool is allocated to wagers combining the first finisher with the other horse finishing in a dead heat for second;

2. The first finisher with either of the horses finishing in a dead heat for second, then the net quinella pool is allocated to wagers combining the two (2) horses which finished in the dead heat for second;

3. The first finisher with either of the horses finishing in a dead heat for second, or combining the two (2) horses which finished in a dead heat for second, then the net quinella pool is distributed as if a show pool and is allocated to wagers combining any of the first three (3) finishers with any other horses;

4. The first two (2) finishers, then the net quinella pool shall be distributed as if a place pool and is allocated to wagers combining the first finisher with any other horses, and wagers combining the second finisher with any other horse.

5. Horses or betting interest as would require distribution, then the entire quinella pool shall be refunded upon presentation and surrender of quinella tickets thereon;

(6) Exacta pool. The exacta pool is a contract by the purchaser of a ticket combining two (2) horses in a single race, selecting the two (2) horses that will subsequently finish first and second in that race. Payment of the ticket shall be made only to the purchaser who has selected the same order of finish as officially posted.

(a) The exacta is not a "parlay" and has no connection with or relation to the win, place and show betting and will be calculated as an entirely separate pool.

(b) If no ticket is sold on the winning combination of an exacta pool, the net pool shall be distributed equally between holders of tickets selecting the winning horse to finish first and/or holders of tickets selecting the second place horse to finish second.

(c) If no ticket is sold that would require distribution of an exacta pool to winner as above defined, the association shall make a complete and full refund of exacta pool.

(d) In case of a dead heat between two (2) horses for first place, the net exacta pool shall be calculated and distributed as a place pool to holders of tickets of the winning combinations. In case of a dead heat between two (2) horses for second place, the exacta pool shall be figured as a place pool, the holders of tickets combining the winning horse and the two (2) horses finishing second participating in the payoff.

(e) In the event of a dead heat for second place, if no ticket is sold on one (1) of the two (2) winning combinations, the entire net pool shall be calculated as a win pool and distributed to those holding tickets on the other winning combination. If no tickets combine the winning horse with either of the place horses in the dead heat, the exacta pool shall be calculated and distributed as a place pool to holders of tickets representing any interest in the net pool.

(f) In the event of an entry finishing first and second, the net exacta pool shall be distributed to holders of tickets selecting the entry to win combined with the horse finishing third.

(7) Trifecta pool. The trifecta is a contract by the purchaser of a ticket combining three (3) horses in a single race, selecting the three (3) horses that will subsequently finish first, second and third in that race. Payment of the ticket shall be made only to the purchaser who has selected the same order of finish as officially posted.

(a) The trifecta is not a parlay and has no connection with or relation to the win, place and show betting and will be calculated as an entirely separate pool.

(b) If no ticket is sold on the winning combination of a trifecta pool, the net pool shall be distributed to the holders of tickets selecting the win and place finishers in that order. If no ticket is sold combining the win and place finish, the net pool will be distributed to the holders of tickets selecting the winner.

(c) If no ticket is sold that would require distribution of the net trifecta pool to a winner as above defined, the association shall make a full refund of the trifecta pool.

(d) In the event of a dead heat or dead heats, all trifecta tickets selecting the correct order of finish, counting a horse in a dead

heat as finishing in either position dead heated, shall be winning tickets. The payoff will be calculated as a place pool.

(e) No entries or field horses shall be allowed in any race that the trifecta is being sold.

(f) For the purpose of trifecta wagering the trifecta race shall be drawn to consist of eight (8) starters and four (4) also eligibles.

(8) Twin Trifecta. The twin trifecta is a form of pari-mutuel wagering. It is not a parlay and has no connection with or relation to any other pari-mutuel pools made and conducted by an association nor is the twin trifecta connected with or related to any win, place and show pools shown on the totalizator board, nor is it governed by any division rules pertaining to the distribution of any other pari-mutuel pools.

(a) In the twin trifecta, the bettor selects the three (3) horses that will finish first, second and third in each of the two (2) designated twin trifecta races in the exact order as officially posted.

(b) Twin trifecta tickets shall be sold and exchanged only from the association's ticket-issuing machines.

(c) Twin trifecta wagers shall be made only in denominations of three (3) dollars.

(d) Each bettor purchasing twin trifecta tickets shall designate three (3) selections as the first three (3) horses to finish in that order in the first race of the designated two (2) twin trifecta races.

(e) After the wagering closes for the first half of the twin trifecta, the commissions will be deducted from the pool in accordance with the laws of the state of Kentucky. The remaining pool will then be divided into two (2) separate pools of equal amounts.

(f) The money in the first part of the divided pool will be distributed to the holders of the twin trifecta tickets selecting the first three (3) horses, in order, on the first designated twin trifecta race, in accordance with the established pari-mutuel practice. The term "first part of divided pool" shall mean one half (1/2) of the net distributable pool of the total money wagered in the twin trifecta on the current program only and, specifically excluded therefrom shall be any carry-over of any special cumulative second race twin trifecta pool from any previous program.

(g) The second part of the divided pool will be placed in a separate pool to be distributed to holders of "second half" twin trifecta tickets selecting the first three (3) horses, in order, on the second designated twin trifecta race, in accordance with the established pari-mutuel practice.

(h) In the first half of the twin trifecta only, if there is a failure to select, in exact order, the first three (3) horses, payoffs and exchanges shall be made on twin trifecta tickets selecting in the following order of priority:

1. The first two (2) horses in exact order, if no such ticket is outstanding, then;

2. The first horse, and any such ticket within the applicable above order of priority shall be deemed a winning ticket entitling the holder thereof to an exchange ticket, in addition to the usual payoff for first half winners;

3. Failure to select winner to win, regardless of the selection of the exact order of the second and/or third horse shall cause a refund to all twin trifecta tickets.

(i) After the official declaration of the first three (3) horses to finish in the first race of the twin trifecta, each bettor holding a winning ticket must, prior to the running of the second twin trifecta race, exchange such winning ticket for both the monetary value established by the association's mutual department and a twin trifecta "exchange" ticket and at such time shall select the three (3) horses to finish in the second race of the twin trifecta in exact order as officially posted. No further money shall be required of the holders of the winning ticket in order to make the exchange. Each association conducting the twin trifecta shall designate all windows to be used as "exchange" windows except when the first half payoff is \$900 or more in winnings (if such winnings are at least 300 times the amount of the single wager). In this case, valid exchange tickets will be exchanged only at all windows designated IRS windows.

(j) No twin trifecta exchange ticket upon the second race of the twin trifecta shall be issued except upon surrender of the winning twin trifecta ticket from the first race of the twin trifecta as described in this administrative regulation. Windows for the purpose of cashing and exchanging twin trifecta tickets shall be open only after the first race of the twin trifecta has been declared official and

windows shall close when wagering closes for the race designated as the second half of the twin trifecta. Not more than one (1) race shall elapse between the race designated the first half of the twin trifecta and the race designated as the second half of the twin trifecta.

(k) If a winning twin trifecta ticket from the first race is not presented for cashing and exchange with the time provided, the bettor may still collect the monetary value attached to the ticket but forfeits all rights to any distribution of the second race twin trifecta pool and the carry-over jackpot.

(l) If a horse is scratched from the first race of the twin trifecta, all twin trifecta tickets on the scratched horse will be refunded. If a horse is scratched from the second race of the twin trifecta, public address announcements will be made and reasonable time will be given for exchange of tickets on the scratched horse.

(m) In the event of a dead heat in either the first or second half of the twin trifecta, all twin trifecta tickets selecting the correct order of finish counting a horse in a dead heat as finishing in any position dead heated shall be winning tickets. In the case of the dead heat occurring in the first half, the payoff shall be calculated as a win pool. In the case of the dead heat occurring in the second half, contrary to the usual pari-mutuel practice, the aggregate number of winning tickets shall be divided into the net pool and be paid the same payoff price.

(n) In the event there is no twin trifecta ticket issued accurately selecting the officially declared first three (3) finishers of the second race, pool, as divided earlier, shall be held for the next consecutive program and combined with that program's second race twin trifecta pool. This sum shall be termed the "carry-over jackpot." Distribution of the special cumulative second race twin trifecta pool shall be made only upon the accurate selection, in exact order, of the first three (3) officially declared finishers of the second twin trifecta race except on the closing program of the meeting (see paragraph (p) of this subsection).

(o) If for any reason the second half of the twin trifecta is not declared "official," the winning ticket holders who have cashed their tickets on the first half and have received an exchange ticket will be entitled to the remaining amount of the current program's divided pool.

(p) On the closing program of the meeting, the current carry-over jackpot, if any, plus the second half pool for that program will be combined and distributed in the following manner:

1. The total twin trifecta pool shall be distributed to the holders of twin trifecta exchange tickets showing the first three (3) horses to finish, in exact order.

2. If there are no twin trifecta exchange tickets showing the first three (3) horses, in the exact order, the payoff will be made on twin trifecta exchange tickets selecting the first two (2) horses in exact order. If no such ticket is outstanding, then;

3. The first horse, and any such ticket within the applicable above order of priority shall be deemed a winning ticket entitling the holder to the total twin trifecta pool.

4. If there are no valid exchange ticket holders, the total twin trifecta pool will be distributed to the holders of first half tickets selecting the first two (2) horses in the exact order.

5. If there are no first half twin trifecta tickets showing the first two (2) horses, the total twin trifecta pool shall be distributed to the holders of first half tickets selecting the horse of the first half of the twin trifecta.

6. If no such ticket is sold that would require the distribution of the net pools as described above, the association shall equally distribute the total twin trifecta pool to all first half ticket holders.

(q) Sales of twin trifecta tickets other than from the association's ticket-issuing machines or from one (1) individual to another shall be deemed illegal. Exchange tickets shall be nontransferable. Persons involved in the unauthorized transfer of exchange tickets shall be ejected.

(9) Refunds.

(a) If after win, place, or show wagering has commenced, a horse not coupled with another as a betting interest is excused by the stewards or is prevented from racing because of failure of the starting-gate door to open properly, the wagers on such horse shall be deducted from the win, place, and show pools, as the case may be, and refunded upon presentation and surrender thereof. If more

than one (1) horse represents a single betting interest by reason of coupling as a mutual entry or mutual field, such single betting interest being the sole subject of a wager or part of a combination in a daily double, exacta or quinella or trifecta wager, then there shall be no refund unless all of the horses representing such single betting interest are excused by the stewards and/or are prevented from racing because of failure of the starting gate doors to open properly.

(b) If after exacta and, quinella and trifecta wagering has commenced, a horse not coupled with another as a betting interest is excused by the stewards or is prevented from racing because of failure of the starting gate to open properly, then exacta and, quinella and trifecta wagers combining such horse with any other horse or betting interest shall be deducted from the exacta and, quinella and trifecta pool and refunded upon presentation and surrender of exacta and, quinella and trifecta quinella tickets thereon.

(10) Race cancelled. If for any reason a race is cancelled or declared "no race" by the stewards after wagering has commenced on such race, then all wagering thereon shall be refunded upon presentation and surrender of pari-mutuel tickets thereon; except as to daily double wagers upon cancellation of the second daily double race, which shall be distributed as provided under subsection (4)(h) of this section.

(11) Totalizator breakdown. In the event of an irreparable breakdown of the totalizator during the wagering on a race, the wagering on that race shall be declared closed and the payoff shall be computed on the sums wagered in each pool up to the time of the breakdown.

Section 5. Minimum Wager and Payoff. The minimum wager to be accepted by any licensed association shall be two (2) dollars. The minimum payoff on a two (2) dollar wager shall be two (2) dollars and twenty (20) cents. In the event of a minus pool, the minimum payoff on each one (1) dollar wager shall be one (1) dollar and five (5) cents.

Section 6. Minors Prohibited from Wagering. No minor shall be permitted by any licensed association to purchase or cash a pari-mutuel ticket.

Section 7. Odds or Payoffs Posted. Approximate odds, based on win pool betting for finishing first for each betting interest, shall be posted on one (1) or more boards or television screens within view of the wagering public, at intervals of not more than ninety (90) seconds. If daily double wagering is conducted, before off-time of the second daily double race, the possible payoff for each two (2) dollar daily double wager combining the winner of the first daily double race with every horse or betting interest in the second daily double race; excepting that, in the event of a dead heat for first in the first daily double race, or a scheduled starter in the second daily double race is excused so as to cause a consolation daily double pool, then posting of all possible payoffs shall not be mandatory, but the association shall make every effort to compute such daily double prices and advise the public of same by posting or public address announcement as soon as possible and prior to the running of the second daily double race.

Section 8. Betting Explanation. Each association shall cause to be published in the daily race program a general explanation of pari-mutuel betting and an explanation of each type of betting pool offered; such explanation also shall be posted in conspicuous places about the association grounds so as to adequately inform the public. Such explanation shall be submitted to the state steward prior to publication so as to insure an absence of conflict with these rules.

Section 9. Prior Approval Required for Betting Pools. Each association desiring to conduct more than nine (9) betting races on a single day, or desiring to offer daily double, exacta or quinella wagering, shall first apply therefor in writing to the commission and obtain specific approval as to number of betting races and type of wagering to be offered on a single day.

Section 10. Pools Dependent upon Entries. (1) Unless the

commission approves a prior written request from the association to alter wagering opportunities for a specific race, each association shall offer win, place, and show wagering on all programmed races involving six (6) or more betting interests.

(2) If horses representing five (5) or fewer betting interests qualify to start in a race, then the association may prohibit show wagering on that race; if horses representing four (4) or fewer betting interests qualify to start in a race, then the association may prohibit both place and show wagering on that race.

(3) If, by reason of a horse being excused by the stewards after wagering has commenced or a horse is prevented from racing because of failure of a starting gate door to open properly, the number of actual starters representing different betting interests is:

(a) Reduced to five (5), then the association may cancel show wagering on that race and the entire show pool shall be refunded upon presentation and surrender of show tickets thereon;

(b) Reduced to four (4) or fewer, then the association may cancel both place and show wagering on that race and the entire place pool and show pool shall be refunded upon presentation and surrender of such place and show tickets thereon.

Section 11. Pari-mutuel Ticket Sales. (1) No pari-mutuel tickets shall be sold except by the association conducting the races on which such wagers are made. No pari-mutuel ticket may be sold after the totalizator has been locked and no association shall be responsible for ticket sales entered into but not completed by issuance of a ticket before the totalizator has been locked.

(2) Any claim by a person that he has been issued a ticket other than that which he requested, must be made before such person leaves the seller window and before the totalizator is locked.

(3) After purchasing a ticket and after leaving a ticket window, a person shall not be entitled to enter for issuance an incorrect ticket, or claim refund or payment for tickets discarded, or lost, or destroyed, or mutilated beyond identification.

(4) Payment on valid pari-mutuel tickets shall be made only upon presentation and surrender thereof to the association where such wager was made within two (2) years following the running of the race on which such wager was made. Failure to present any such ticket within two (2) years shall constitute a waiver of the right to receive payment thereon.

(5) Payment of valid pari-mutuel tickets shall be made on the basis of the order of finish as purposely posted on the infield results board and declared "official" by the stewards; any subsequent change in such order of finish or award of purse money as may result from a subsequent ruling by the stewards or commission, shall in no way affect the pari-mutuel payoff.

(6) The association shall be responsible for the correctness of all payoff prices posted as "official" on the infield results board. If an error is made in posting the payoff figures on the public board, and ascertained before any tickets are cashed thereon, then such posting error may be corrected accompanied by a public address announcement, and only the correct amounts shall be used in the payoff, irrespective of the initial error on the public board.

(7) Prior to posting payoffs, the pari-mutuel manager shall require each of the computer printout sheets (calculating sheets) of such race to be proven by the computer (calculator) and the winners verified. Such proof shall show the amounts for commission, breakage, and payoffs, which added together shall equal the total pool. All pay slips are to be checked with computer printout sheets (calculating sheets) as to winners and prices before being issued to cashiers, and all board prices are to be rechecked with the computer printout sheet (calculator) before released to the public.

(8) Whenever the recapitulation of the sales registered by each ticket issuing machine subsequently proves that the actual amount in the pool or pools, is less than the amount used in calculating the payoff, such deficiency shall be deposited in the pool or pools by the association. Should the recapitulation of sales prove that the actual amount in the pool or pools is greater than the amount used in calculating the payoff due to a mechanical error of the totalizator such error resulting in underpayment to the public, then the aggregate of such underpayments shall be paid into the corresponding pool of the next race or races, in such amounts as may be determined by the state steward and the pari-mutuel manager. If any

~~such error should occur in computing the daily double pool, the underpayment shall be added to the daily double pool of the following day. Overpayments and underpayments subsequently discovered upon recapitulation after the close of a meeting may be adjusted, and any underpayment resulting from such final adjustment shall be paid to the Department of Revenue.~~

~~Section 12. Betting Interests Involving more than One (1) Horse. When two (2) or more horses entered for the same race are determined by the stewards to have common ties through ownership or training and are joined by the stewards as a "mutuel entry," such mutuel entry shall become a single betting interest and a wager on one (1) horse in a mutuel entry shall be a wager on all horses in the same mutuel entry. When the number of horses competing in a race exceeds the numbering capacity of the totalizator, the racing secretary shall assign the highest pari-mutuel numbers to horses so that the highest numbered horse within the numbering capacity of the totalizator, together with horses of higher numbers, shall be grouped in the "mutuel field" as a single betting interest, and a wager on one (1) horse in the mutuel field shall be a wager on all horses in the same mutuel field.~~

~~Section 13. Emergency Situations. In the event any emergency arises in connection with the operation of the pari-mutuel department not provided for by these rules, then the pari-mutuel manager shall make an immediate decision and render a full report to the commission.]~~

ROBERT M. BECK, JR., Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: July 20, 2010

FILED WITH LRC: July 20, 2010 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 29, 2010 at 10 a.m., in the clubhouse of The Red Mile, 1200 Red Mile Rd., Lexington, Kentucky 40504-2652. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by September 22, 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 September 30, 2010. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Timothy A. West

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the regulatory framework that applies to all pari-mutuel wagering on live and historical horse races in the Commonwealth. It authorizes pari-mutuel wagering on historical horse races and requires the use of seed pools for such wagers. It establishes where, and under what circumstances, pari-mutuel wagering on live and historical horse races may take place. It places requirements on how winning pari-mutuel wagers shall be paid. It requires associations to maintain records regarding all pari-mutuel wagering at their facilities and to make them available to the commission on request. It establishes guidelines for the equipment used by the association to offer pari-mutuel wagering and provides requirements for the sale of pari-mutuel tickets. It establishes minimum wagers and payouts for pari-mutuel wagers on live and historical horse races.

(b) The necessity of this administrative regulation: This regulation is necessary for the commission to regulate the integrity of pari-mutuel wagering in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which quarter horse, appaloosa and arabian racing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating mutuel wagering on horse races under the pari-mutuel system of wagering. This regulation establishes the regulatory framework that applies to all pari-mutuel wagering on live and historical horse races in the Commonwealth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which quarter horse, appaloosa and arabian racing and pari-mutuel wagering thereon shall be conducted in the Commonwealth. This regulation provides the specific rules for pari-mutuel wagering on live and historical horse races in the Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: The existing regulation required updating to address certain innovations in pari-mutuel wagering. This amendment takes those innovations into account and incorporates them into the commission's regulatory framework. The amendment also addresses certain inconsistencies between the pari-mutuel regulations that govern thoroughbred, standardbred, and quarter horse/appaloosa/arabian racing (810 KAR 1:011, 811 KAR 1:125, and 2:060 respectively). To the extent possible, the amendment brings uniformity to the rules governing pari-mutuel wagering for the various breeds.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to address innovations in the way pari-mutuel wagering is offered and to bring uniformity among pari-mutuel wagering for thoroughbred, standardbred, and quarter horse/appaloosa/arabian racing. The amendment is also necessary to establish guidelines governing pari-mutuel wagering on historical horse races.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which horse racing and pari-mutuel wagering thereon shall be conducted in the Commonwealth. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating mutuel wagering on horse races under the pari-mutuel system of wagering. This amendment sets forth the requirements that apply to all pari-mutuel wagering on live and historical horse races in the Commonwealth.

(d) How the amendment will assist in the effective administration of the statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which quarter horse, appaloosa and arabian racing and pari-mutuel wagering thereon shall be conducted in the Commonwealth. This amendment provides the specific rules for pari-mutuel wagering on live and historical horse races in the Commonwealth.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the eight currently-licensed racing associations in the Commonwealth, any applicant for the final racing association license, the owners and trainers who participate in racing in the Commonwealth, the jockeys who ride in the Commonwealth, the patrons who place pari-mutuel wagers on live and historical horse races in the Commonwealth, and the commission.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The licensed racing associations will be required to follow the procedure outlined in the regulation to offer any exotic wager that has not been previously approved by the

commission. If an association requests and is granted permission by the commission to offer pari-mutuel wagering on historical horse races, then the association will be required to conduct such pari-mutuel wagering in a designated area (as defined in 811 KAR 2:010). The associations that offer pari-mutuel wagering on historical horse races will also be required to enter into an agreement with the Kentucky Quarter Horse Racing Association, or the Arabian Jockey Club, or a horsemen's organization representing the appaloosa breed regarding the allocation of the takeout between the association and the horsemen and file a memorandum with the commission outlining the terms 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): If an association requests and receives permission to offer pari-mutuel wagering on historical horse races, then the association will incur costs constructing or renovating a designated area (as defined in 811 KAR 2:010) to house the terminals. An association will also incur costs purchasing or leasing commission-approved terminals and hiring additional employees to staff the designated area and maintain the terminals. Any association offering pari-mutuel wagering on historical horse races will also be required to reimburse the commission pursuant to KRS 230.240 to cover the commission's increased regulatory costs relating to compensation of additional personnel and other expenses.

The total increase in the commission's regulatory costs will be based upon the number of associations that offer pari-mutuel wagering on historical horse races and the number of terminals at each association. The increased costs will likely include the addition of new employees and equipment. There will be no additional costs to owners, trainers, jockeys, or patrons placing pari-mutuel wagers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The associations will be able to offer increased pari-mutuel wagering options to patrons and can expect an increase in on-track attendance and total pari-mutuel handle. The increased revenue can be used to maintain and improve racing association facilities and supplement purses for live races run at each association. The increased purses will help the associations to compete with racing associations in neighboring states that offer expanded gaming options. The owners, trainers, and jockeys will benefit from increased purses, as well as any improvements to an association's facilities. The patrons will benefit from any improvements to an association's facilities as well as from increased pari-mutuel wagering options.

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

(a) Initially: See answer to question 4(b).

(b) On a continuing basis: With respect to pari-mutuel wagering on historical horse races, the commission anticipates that the first year such wagering is offered will see the greatest increase in regulatory costs. Thereafter, the commission expects the continuing costs to be mainly for employee compensation and expenses and equipment maintenance. The commission will be reimbursed by the associations for additional employee compensation and other expenses pursuant to KRS 230.240.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The commission will be reimbursed by the associations for additional employee compensation and other expenses pursuant to KRS 230.240.

(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 associations that request and receive permission to offer pari-mutuel wagering on historical horse races will be required to reimburse the commission for the cost of compensation of additional employees and other expenses pursuant to KRS 230.240.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The associations that request and receive permission to offer pari-mutuel wagering on historical horse races will be required to reimburse the commission for the cost of compensation of additional employees and expenses pursuant to KRS 230.240.

(9) TIERING: Is tiering applied? Tiering is not applied. All as-

pects of this regulation will be applied equally to each association.

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 and the Department of Revenue.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215, 230.240, 230.260, 230.280, 230.290, 230.300, 230.310, 230.320, 230.361, 230.370.

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. The commission anticipates that its regulatory costs will increase based upon the associations offering pari-mutuel wagering on historical horse races. The increased costs will likely include the addition of new employees and equipment. The total increase will be based upon the number of associations that offer pari-mutuel wagering on historical horse races and the number of terminals at each association. The associations that offer pari-mutuel wagering on historical horse races will be required to reimburse the commission the costs associated with compensation of employees and other expenses pursuant to KRS 230.240. The Department of Revenue may have an increase in collection duties, but they are minimal and can be absorbed by the Department.

(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 amount of tax revenue generated is dependent upon the number of terminals the associations install and operate. While that number is unknown at this time, it is estimated that annual tax revenue will be somewhat less than \$1,000 per terminal.

(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? Based upon the experience of Oaklawn Park, the commission anticipates that revenue will more than double from the first to the second year, and more than triple from the second to the third year.

(c) How much will it cost to administer this program for the first year? The increased regulatory costs of the commission will be based upon the number of associations that offer pari-mutuel wagering on historical horse races and the number of terminals installed at each association.

(d) How much will it cost to administer this program for subsequent years? In subsequent years, the commission anticipates the costs largely to come from employee compensation and expenses and equipment maintenance. The commission will be reimbursed for these costs by the associations.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR PUBLIC PROTECTION Department of Housing, Buildings and Construction Division of Building Code Enforcement (Amendment)

815 KAR 7:110. Criteria for expanded local jurisdiction.

RELATES TO: KRS 198B.040(7), 198B.050, 198B.060, 198B.070

STATUTORY AUTHORITY: KRS 198B.050(5), 198B.060(5), (6), (18)

NECESSITY, FUNCTION, AND CONFORMITY: KRS

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198B.060(5) and (6) authorizes a local government to petition the ~~commissioner~~~~[executive director]~~ to request additional plan review and inspection functions to be allocated to that local government. This administrative regulation establishes the requirements for local building departments to request and be granted expanded building code plan review and inspection jurisdiction and to collect fees for those activities.

Section 1. Definitions. (1) "City" means:

(a) City organized and governed under the mayor-alderman form of government pursuant to KRS Chapter 83;

(b) City organized and governed under the mayor-council form of government pursuant to KRS Chapter 83A;

(c) City organized and governed under the commission form of government pursuant to KRS Chapter 83A;

(d) City organized and governed under the city manager form of government pursuant to KRS Chapter 83A;

(e) Consolidated local government organized and governed under the consolidated local government form of government pursuant to KRS Chapter 67C; and

(f) Urban-county government organized and governed under the urban-county form of government pursuant to KRS Chapter 67A.

(2) "County" means one (1) of 120 political subdivisions of the Commonwealth created and established by the laws of the Commonwealth.

(3) "Local governing body" means the chief governing body of a city, county, consolidated local government, or urban-county which has legislative powers.

(4) "Local government" means each city, regardless of classification; each county; each consolidated local government; and each urban-county government.

Section 2. [Section 4.] Uniform Criteria for Granting Expanded Jurisdiction. To ~~apply~~~~[petition]~~ for expanded jurisdiction pursuant to KRS 198B.060(5), a local government shall comply with the requirements established in this section.

(1) An authorized representative of a local government [A local government] shall complete the Application for Local Expanded Jurisdiction, Form BCE/EJ #1, and submit it to the ~~department~~~~[office]~~ together with the supporting documentation required by this administrative regulation.

(2) Certified ~~inspectors~~~~[inspector]~~ required.

(a) The local government shall ~~certify that it employs or contracts~~~~[employ or contract]~~ with a person, firm, or company to perform the ~~plan reviews, specifications, and~~~~[plans and specifications inspection or]~~ building inspection functions granted to the local government.

(b) The local government shall employ or execute a legal contract with at least one (1) person certified as a building inspector level III, pursuant to 815 KAR 7:070 and is responsible for reviewing plans, reviewing specifications, and performing building inspections.

(c) ~~(a)~~ The local government shall employ or ~~execute a legal contract with a certified electrical inspector to enforce the National Electric Code (NFPA 70) as adopted and incorporated into the Kentucky Building Code (815 KAR 7:120) and Kentucky Residential Code (815 KAR 7:125).~~~~[and other code enforcement personnel and support staff necessary to enforce the Kentucky Building Code within the expanded jurisdiction.~~

(b) The local government shall have at least one (1) person who is a building inspector level III, pursuant to 815 KAR 7:070 reviewing the plans and specifications and performing building inspections. The designated Level III inspector shall have a minimum of three (3) years experience in that capacity.]

(3) Additional personnel. A complete list of code enforcement personnel, including the building inspector level III and certified electrical inspector, ~~[that shall be]~~ employed or contracted with to enforce the code within the expanded jurisdiction shall be submitted with the application. The list of personnel shall include the name, job title and certification status of each individual.

(4) Construction activity. The local government shall provide documentation of the permits issued and fees collected for the previous calendar year, if any, and an estimation of the anticipated

increase in activity if granted expanded jurisdictional authority ~~[with the expanded jurisdiction].~~

(5) Local government contracts.

(a) If a local government associates with other local governments to share plan and specifications inspection or building functions pursuant to KRS 198B.060(15), the documentation of permit and fee activity required by subsection (4) of this section shall be provided by the applicant; or

(b) If a local government contracts with a person, firm, or company to provide plan and specification inspections or building inspection functions, and the person, firm, or company, the documentation of permit and fee activity required by subsection (4) of this section shall be provided by the applicant.

~~[(5) Contracts with other local governments. If a person, firm, or company has been contracted to provide plans and specifications inspection functions and the person, firm, or company provides inspection services for other local governments, the documentation of permit and fee activity required by subsection (4) of this section shall be provided for each of the other local governments.]~~

(6) Official contact person. The local government shall identify and provide:

(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) Inclusions and exclusions.

(a) ~~Application~~~~[A local government's petition]~~ for expanded jurisdiction pursuant to KRS 198B.060(5) shall include:

1. A ~~[complete]~~ list of each building occupancy classification and size for which expanded jurisdiction is requested;

2. A ~~[complete]~~ list of each building occupancy classification and size for which expanded jurisdiction is not requested; and

3. A copy of the local ordinance requiring single family dwelling plan review and inspection ~~within the jurisdiction.~~

4. A copy of the schedule of fees as adopted by the local governing body ~~[or a statement to the effect that the local government elects not to regulate them.]~~

(b) The minimum responsibilities required by KRS 198B.060(2) shall be maintained by the local government, unless specifically agreed otherwise in writing ~~between~~~~[by]~~ the local government and the ~~department~~~~[office]~~.

(8) State jurisdiction. The ~~department~~~~[office]~~ shall retain plan review, inspection and enforcement responsibility under the Kentucky Building Code for all buildings which are:

(a) Institutional buildings;

(b) Educational buildings ~~unless specifically agreed in writing by the local government and the department;~~

(c) Licensed facilities as mandated by the Cabinet for Health and Family Services, including day care centers, hospitals, and nursing homes;

~~(d) [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;~~

~~(e)] State-owned and state-leased~~~~[or leased]~~ buildings and facilities;

~~(e) [(d)] High-hazard occupancies, unless specifically agreed in writing by the local government and the ~~department~~~~[office]~~; and~~

~~(f) [(e)] Industrialized building systems (including modular homes) except for site placement and assembly of individual modular homes. A local government may permit placement and assembly locally with written notification to the department for each placement.~~

Section 3. ~~[modular homes which may be permitted locally upon notification from the office for each instance.]~~

Section 2.] Procedures for Maintaining Expanded Jurisdiction.

(1) The ~~department~~~~[office]~~ shall monitor the program of ~~each local government granted expanded jurisdiction responsibilities. If a local government that has been granted additional responsibility. If the~~ local government is found to be in violation of the requirements

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of this administrative regulation, the Kentucky Building Code, the Kentucky Residential Code, the ~~any~~ terms of the applicable expanded jurisdiction agreement, or KRS Chapters 198B, 235, or 318, the department may ~~their agreement or KRS Chapter 198B, the office may cancel the agreement, rescind the expanded jurisdiction and~~ preempt the local program in whole or in part, ~~its entirety,~~ upon approval of the board.

(2) Each agreement for expanded jurisdiction shall be in effect for three (3) years, unless ~~the agreement is~~ canceled:

(a) Canceled by agreement ~~By agreement~~ of the parties in writing; or

(b) Preempted in whole or in part pursuant ~~Pursuant~~ to subsection (1) of this section.

(3) The local government shall notify the department ~~office~~, within thirty (30) days of any changes in personnel or fees during the terms of the agreement ~~contract period~~.

(4) Before the expiration of the three (3) year agreement for expanded jurisdiction, the local jurisdiction shall submit an application for renewal on Form BCE/EJ #2. The renewal application shall contain the following:

(a) A list of each building occupancy classification and size for which expanded jurisdiction is requested to continue;

(b) A list of each building occupancy classification and size for which expanded jurisdiction is not requested;

(c) A copy of the local ordinance, if different than submitted with previous application requiring single family dwelling plan review and inspection within the jurisdiction; and

(d) A copy of the current schedule of fee as adopted by the local governing body.

5. After receiving and reviewing the local government's application for renewal, the department shall:

(a) Reevaluate the building code enforcement program of the local government; and

(b) Make a recommendation to the board supporting or withholding support for continuation and renewal of the expanded jurisdiction.

6. Upon receiving comments from the board, the department shall either renew the local government's expanded jurisdiction or deny the renewal request.

7. The minimum responsibilities required by KRS 198B.060(2) shall continue by the local government, or as agreed under the initial application and approval.

8. The department shall retain plan review, inspection and enforcement responsibility under the Kentucky Building Code for all buildings as specified in the original agreement for expanded local jurisdiction with the local government.

~~Section 4. The office shall reevaluate the building code enforcement program of the local government and make a recommendation to the board regarding continuation of the expanded jurisdiction and renewal of the agreement. Upon approval by the board and the local government, the office shall renew its agreement for another three (3) years.~~

~~Section 3.] Local Appeals Board. (1) The local government with expanded jurisdiction may establish a local appeals board in accordance with KRS 198B.070.~~

(2) If the local government establishes a local appeals board, the local government shall send a written notice to the department ~~office~~, which shall:

(a) Identify ~~the names of~~ each member by name and ~~their technical~~ qualifications for being appointed to the appeals board; and

(b) Include contact information ~~for the method for contacting~~ the local appeals board.

(3) ~~If there is not~~ a local appeals board is not established, all costs incurred in processing any appeals filed pursuant to KRS 198B.070(5) ~~the appeal~~ shall be charged to the local government

~~Section 5. For each appeal filed pursuant to KRS 198B.070(5).~~

~~Section 4.] One (1) and Two (2) Family Dwellings. (1) The local building inspection program shall not include the plan review and inspection for of the construction of one (1) and two (2) family~~

dwellings that are:

(a) Manufactured homes;

(b) Modular homes; or

(c) Farm dwellings.

(2) The local building inspection program shall include permits and inspections for the foundation system and other on-site construction related to modular home installations. ~~[Section 5. Local Government Fees Schedule. (1) The local fees authorized by KRS 198B.060(18), established for construction projects which continue under state jurisdiction, shall be adjusted to reflect that plan review or inspection functions will not be provided by the local government.~~

~~(2) Each local government's petition for expanded jurisdiction shall include a copy of the schedule of fees as adopted by the local legislative body.]~~

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

(a) "Application for Local Expanded Jurisdiction, Form BCE/EJ #1", October, 2007; and

(b) Renewal "Application for Expanded Justice, Form BCE/EJ #2", August, 2010 ~~[Form BCE/EJ #1, Application for Local Expanded Jurisdiction, October, 2007, is incorporated by reference.]~~

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Department ~~Office~~ 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 D. VANCE, Secretary

APPROVED BY AGENCY: August 12, 2010

FILED WITH LRC: August 13, 2010 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 2010, at 10:00 a.m., at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 16, 2010 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502)573-0394 Ext. 144, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dawn M. Bellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the requirements for local building departments to request and be granted expanded building code plan review and inspection jurisdiction and to collect fees for those activities.

(b) The necessity of this administrative regulation: KRS 198B.060 authorizes a local government to petition the commissioner of the Department of Housing, Buildings and Construction for additional plan review and inspection functions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes the standards and procedures for local governments to apply for additional plan review and inspection responsibilities.

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

allows local governments to apply and be granted expanded jurisdiction for plan review and inspections.

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

(a) How the amendment will change this existing administrative regulation: The amendments will add definitions, clarify existing language and incorporate a renewal form.

(b) The necessity of the amendment to this administrative regulation: The addition of definitions and clarification of language to eliminate confusion of local jurisdiction authority. It will also incorporate a renewal form.

(c) How the amendment conforms to the content of the authorizing statutes: Clarifies the standards and procedures utilized by local entities to apply for expanded jurisdiction and incorporates a renewal form.

(d) How the amendment will assist in the effective administration of the statutes: Will assist local entities with procedures and standards for applying for expanded jurisdiction and renewal of agreements.

(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 and those local government entities that apply for expanded jurisdiction.

(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: Local governments applying for renewal of expanded jurisdiction privileges will have a standardized form to submit with application.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The local entities will benefit from definitions applicable to them and clarification of existing language. It will also provide a standardized form for renewal of their agreement.

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

(a) Initially: Negligible

(b) On a continuing basis: Negligible

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

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

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

(9) TIERING: Is tiering applied? Tiering does not apply as this amendment adds definitions, clarifies existing language, and incorporates a renewal form that will be applied to all local entities applying for expanded jurisdiction.

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 and local governments who apply for and those who have been granted expanded jurisdiction.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 198B.050 and KRS 198B.060.

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. N/A

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET

Department of Housing, Buildings and Construction Division of Heating, Ventilation and Air Conditioning Contractors (Amendment)

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

RELATES TO: KRS 198B.658, 198B, 660, 198B.664, 198B.672, EO 2009-535

STATUTORITY AUTHORITY: KRS 198B.654(1), 198B.684, EO 2009-535

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.654(1), authorizes the Kentucky Board of Heating, Ventilation, and Air Conditioning to promulgate administrative regulations necessary to enforce the provisions of KRS 198B.650 to 198B.689. KRS 198B.684 authorizes the Kentucky Board of Heating, Ventilation, and Air Conditioning Contractors to promulgate an administrative regulation with standards for continuing education for licensees and certificate holders. 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 continuing education requirements for HVAC license holders.

Section 1. Master HVAC Contractor Licensees. (1) Each Master HVAC Contractor shall provide proof of completion of at least eight (8) hours of approved continuing education prior to license renewal.

(2) The required continuing education shall be completed by licensee within the twelve (12) months preceding renewal except as provided in subsection (3).

(3) Continuing education courses shall relate to one (1) or more of the following:

(a) Business;

(b) Job safety;

(c) Codes relating to HVAC; and

(d) Board- or board designee-approved subjects directly relating to the HVAC.

(4) A licensed master HVAC contractor that accumulates more than the eight (8) hours of continuing education required annually, may carry forward the excess credit hours into the two (2) successive educational years for the purpose of satisfying the minimum requirement for those two (2) years. Carry forward credits are limited to a total of twelve (12) hours. All excess credits above the total of twelve (12) hours will remain on the licensed master HVAC contractor's records but shall not be carried forward.

(5) A licensed master HVAC contractor teaching or participat-

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ing as a panel member in an approved continuing education course for heating, ventilation or air conditioning shall be granted one (1) credit hour for each fifty (50) minutes of actual instruction time.

Section 2. Journeyman HVAC Licensees. (1) Each journeyman shall provide proof of completion of at least eight (8) hours of approved continuing education prior to license renewal except as provided in subsection (5).

(2) The required continuing education shall be completed by licensee within the twelve (12) months preceding renewal.

(3) Continuing education courses shall relate to one (1) or more of the following:

- (a) Business;
- (b) Job safety;
- (c) Codes relating to HVAC; and

(d) Board- or board designee-approved subjects directly relating to the HVAC trade.

(4) A maximum of four (4) hours of continuing education relating to job safety shall be allowed towards annual journeyman license renewal.

(5) A licensed HVAC journeyman that accumulates more than the eight (8) hours of continuing education required annually, may carry forward the excess credit hours into the two (2) successive educational years for the purpose of satisfying the minimum requirement for those two years. Carry forward credits are limited to a total of twelve (12) hours. All excess credits above the total of twelve (12) hours will remain on the licensed HVAC journeyman's records but shall not be carried forward.

(6) A licensed HVAC journeyman teaching or participating as a panel member in an approved continuing education course for HVAC shall be granted one (1) credit hour for each fifty (50) minutes of actual instruction time.

Section 3. Combined Master and Journeyman Licensees. An individual who is a holder of both a master and a journeyman license shall meet the continuing education requirements of Section 1 of this administrative regulation.

Section 4. Inactive Master HVAC Contractor Licensees. (1) An inactive HVAC Contractor shall not be required to complete continuing education to maintain inactive status.

(2) If an inactive HVAC Contractor wishes to activate his or her license to the status of an active HVAC Contractor, he or she shall complete four (4) hours of current safety standards continuing education and four (4) hours of current mechanical code continuing education.

(3) Proof of completion of continuing education requirements shall be submitted to the department prior to license reactivation.

Section 5. Continuing Education Courses. (1) All continuing education required for master and journeyman license holders shall be completed in courses approved by the Kentucky Board of Heating, Ventilation, and Air Conditioning Contractors or its designee pursuant to 815 KAR 8:060.

(2) Continuing education courses shall be offered only by providers approved by the Kentucky Board of Heating, Ventilation, and Air Conditioning Contractors or its designee pursuant to 815 KAR 8:060.

(3) Continuing Education Courses shall be a minimum of two (2) hours. One (1) hour of class shall be equivalent to fifty (50) minutes of classroom instruction.

(4) Continuing education courses offered by a provider not approved in accordance with 815 KAR 8:060 shall be approved by the board or its designee if the following are met:

(a) Approval is requested by the individual license holder thirty (30) days in advance of course date;

(b) A detailed syllabus of the course is provided with the request; and

(c) The course is determined by the board or its designee to be beneficial to the licensee in the HVAC trade.

(5) The board or its designee shall approve a request if the information has been submitted in accordance with subsection (4) of this section of this administrative regulation. The license holder

shall provide an affidavit from the instructor verifying the hours of attendance.

RICHARD MOLONEY, Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: August 12, 2010

FILED WITH LRC: August 13, 2010 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 2010, at 10:00 a.m., at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 16, 2010 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502)573-0394 Ext. 144, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dawn M. Bellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the continuing education requirements for HVAC license holders.

(b) The necessity of this administrative regulation: KRS 198B.654 requires the Board of Heating, Ventilation and Air Conditioning Contractors to promulgate administrative regulations necessary to enforce the provisions of KRS 198B.650 to 198B.689 and 198B.684 authorizes the Board to establish continuing education requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the continuing education requirements for master HVAC contractors, journeyman HVAC mechanics, combined master and journeyman HVAC license holders and inactive master HVAC contractors.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation sets forth the continuing education requirements for master HVAC contractors, journeyman HVAC mechanics, combined master and journeyman HVAC license holders and inactive master HVAC contractors as required by KRS 198B.654 and 198B.684.

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

(a) How the amendment will change this existing administrative regulation: It will allow HVAC contractors and HVAC Journeymen to carry forward continuing education credits not to exceed twelve (12) hours. It will also allow HVAC contractors and journeyman who are approved instructors to be granted one (1) credit for each fifty (50) minutes of instruction time.

(b) The necessity of the amendment to this administrative regulation: This amendment provides licensees alternative mechanisms for meeting continuing education requirements.

(c) How the amendment conforms to the content of the authorizing statutes: The statutes allow the Board of HVAC Contractors to establish the criteria for continuing education requirements. This regulatory amendment was approved by the Board of Heating, Ventilation and Air Conditioning Contractors.

(d) How the amendment will assist in the effective administration of the statutes: Providing alternative mechanisms for obtaining continuing education requirements allows licensees the ability to

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"bank" continuing education credits which will protect the license should some unforeseen circumstance prevent attendance of classes prior to renewal.

(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; master HVAC contractor licensees; journeyman HVAC mechanic licensees; combined master HVAC contractor and journeyman HVAC mechanic licensees; and inactive master HVAC contractor licensees.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Department will be charged with tracking carry-forward continuing education hours and licensees will continue to submit proof of attendance at continuing education classes or teaching classes.

(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 anticipated additional costs to either the Department or licensees as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees will be given credit for teaching continuing education courses and may carry forward credits obtained in excess of those required annually for renewal.

(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 continuing education requirements for HVAC licensees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. 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 does not establish new fees nor will it directly or indirectly increase existing fees.

(9) TIERING: Is tiering applied? Tiering is not applied 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 HVAC will be impacted by this amended administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is authorized by KRS 198B.654 and 198B.684.

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 new fees 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. This regulatory amendment will result in no new revenues or expenditures.

(b) How much revenue will this administrative regulation gen-

erate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A

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

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

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: There is no 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 20:032. Continuing education requirements for plumbers.

RELATES TO: KRS 318.054, KRS 318.130

STATUTORY AUTHORITY: KRS 318.054, 318.130

NECESSITY, FUNCTION, AND CONFORMITY: The department[office] is directed by KRS 318.130 to adopt and put into effect a State Plumbing Code. KRS 318.054 authorizes the department[office], after review by the State Plumbing Code Committee, to adopt continuing education requirements for plumbers. This administrative regulation establishes those requirements.

Section 1. Master Plumbers. (1) Each master plumber shall provide proof of completion of eight (8) hours of continuing education prior to license renewal. The required continuing education shall be received within twelve (12) months prior to renewal.

(2) Continuing education courses shall relate to one (1) or more of the following:

(a) Business;

(b) Job safety;

(c) The Kentucky state plumbing code; or

(d) Items directly related to the plumbing trade.

(3) A licensed master plumber that accumulates more than the eight (8) hours of continuing education required annually, may carry forward the excess credit hours into the two (2) successive educational years for the purpose of satisfying the minimum requirement for those two (2) years. Carry forward credits are limited to a total of twelve (12) hours. All excess credits above the total of twelve (12) hours will remain on the licensed master plumber's records but shall not be carried forward.

(4) A licensed master plumber teaching or participating as a panel member in an approved continuing education course for plumbing shall be granted one (1) credit hour for each fifty (50) minutes of actual instruction time.

Section 2. Journeyman Plumbers. (1) Each journeyman plumber shall provide proof of completion of eight (8) hours of continuing education prior to license renewal. The required continuing education shall be received within twelve (12) months prior to renewal.

(2) Continuing education courses shall consist of a minimum of two (2) hours on job safety. The other six (6) hours shall consist of:

(a) The Kentucky state plumbing code;

(b) Job safety; or

(c) Items directly related to the plumbing trade.

(3) A licensed journeyman plumber that accumulates more than the eight (8) hours of continuing education required annually, may carry forward the excess credit hours into the two successive educational years for the purpose of satisfying the minimum requirement for those two years. Carry forward credits are limited to a total of twelve (12) hours. All excess credits above the total of twelve (12) hours will remain on the licensed journeyman plumber's records but shall not be carried forward.

(4) A licensed journeyman plumber teaching or participating as

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a panel member in an approved continuing education course for plumbing shall be granted one credit hour for each fifty (50) minutes of actual instruction time.

Section 3. Combined Master and Journeyman Licenses. An individual which is a holder of both a master and a journeyman license shall meet the continuing education requirements of Section 1 of this administrative regulation.

Section 4. Inactive Master Licenses. (1) An inactive master plumber shall not required to complete continuing education to maintain inactive status.

(2) If the inactive licensed plumber wishes to activate his or her license to the status of an active master plumber, he or she shall meet the requirements of Section 1 of this administrative regulation.

(3) Any excess continuing education credit hours that a master plumber may be carrying forward shall not count towards continuing education requirements for re-activation of an inactive license.

Section 5. Delinquent Licenses. (1) Except as provided in subsection (2) of this subsection prior to reinstatement, an individual whose master or journeyman license is delinquent shall complete the total number of continuing education hours per year that the license has been delinquent.

(2) The number of hours necessary for reinstatement shall not exceed forty (40) hours.

Section 6. Continuing Education Courses. (1) All continuing education shall be completed in one or more courses approved by the ~~department[office]~~ and the Kentucky state plumbing code committee for master and journeyman plumbers pursuant to 815 KAR 20:034.

(2) Continuing education courses shall be offered only by providers approved by the ~~Department[Office]~~ and the Kentucky State Plumbing Code Committee pursuant to 815 KAR 20:034.

RICHARD MOLONEY, Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: August 12, 2010

FILED WITH LRC: August 13, 2010 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 2010, at 10:00 a.m., at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 16, 2010 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502)573-0394 Ext. 144, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dawn M. Bellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes continuing education requirements for plumbing licensees.

(b) The necessity of this administrative regulation: This amendment is necessary in order to set the requirements for continuing education for plumbers.

(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 master and journeyman to carry forward a total of twelve (12) continuing education hours. It will also allow a master or journeyman plumber that teaches a continuing education plumbing course to be granted one (1) credit hour for each fifty (50) minutes of instruction.

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

(a) How the amendment will change this existing administrative regulation: The amendment will allow plumbing licensees to carry forward continuing education credits not to exceed twelve (12) hours. It will also allow HVAC contractors and journeyman who are approved instructors to be granted one (1) credit for each fifty (50) minutes of instruction time.

(b) The necessity of the amendment to this administrative regulation: This amendment provides licensees alternative mechanisms for meeting continuing education requirements.

(c) How the amendment conforms to the content of the authorizing statutes: The statutes authorize the Plumbing Code Committee to recommend reasonable rules to establish the criteria for continuing education requirements. This regulatory amendment was approved by the Plumbing Code Committee.

(d) How the amendment will assist in the effective administration of the statutes: Providing alternative mechanisms for obtaining continuing education requirements allows licensees the ability to "bank" continuing education credits which will protect the license should some unforeseen circumstance prevent attendance of classes prior to renewal.

(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: The Department will be charged with tracking carry-forward continuing education hours and licensees will continue to submit proof of attendance at continuing education classes or teaching classes.

(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): Licensees will be given credit for teaching continuing education courses and may carry forward credits obtained in excess of those required annually for renewal.

(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. N/A

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

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

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

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: There is no anticipated fiscal impact from this administrative regulation to state or local government.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(Amendment)

921 KAR 2:040. Procedures for determining initial and continuing eligibility.

RELATES TO: KRS 205.010, 205.200, 205.245, 42 U.S.C. 601-619

STATUTORY AUTHORITY: KRS 194A.050(1), 205.200(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS Chapter 205 requires the Cabinet for Health and Family Services to administer the following public assistance programs: Kentucky Transitional Assistance Program (K-TAP) [or "K-TAP"] and State Supplementation Program (SSP) [or "SSP"]. KRS 205.200(2) requires the cabinet to prescribe, by administrative regulation, the conditions of eligibility for public assistance, in conformity with Title IV-A of the Social Security Act, 42 U.S.C. 601-619 and federal regulations. This administrative regulation establishes the procedures used to determine initial and continuing eligibility for assistance under these programs.

Section 1. Eligibility Determination Process. (1) A household shall, for the month payment is intended to cover the household, meet the eligibility criteria in:

(a) 921 KAR 2:006 and 921 KAR 2:016 for K-TAP; or

(b) 921 KAR 2:015 for SSP.

(2) A household shall not receive:

(a) Assistance until approval of the application for benefits; or
 (b) Benefits prior to application.

(3) Each decision regarding eligibility for assistance shall be supported by facts recorded in the applicant's or recipient's case record.

(4) The applicant or recipient shall be the primary source of information and shall be required to:

(a) Furnish verification of:

1. Income;

2. Resources; and

3. Technical eligibility; and

(b) Give written consent to contacts necessary to verify or clarify a factor pertinent to the decision of eligibility.

(5) If informed in writing of the appointment or necessary information to be provided, failure of the applicant or recipient to appear for a scheduled interview or present required information at the time requested shall be considered a failure to present adequate proof of eligibility.

(6)(a) An application shall be considered filed if a PA-77, Intent to Apply for Medicaid and/or K-TAP (Cash Assistance), or a KIM-100, KAMES Application, containing the name, address, and signature of the applicant is received by a DCBS office.

(b) An application shall be processed after the:

1. Applicant or representative is interviewed;

2. Required information and verification for the application is provided to the DCBS office; and

3.

(c) [An applicant shall comply with the application requirements to determine initial eligibility for K-TAP or SSP as established in 921 KAR 3:030.

(d) If an electronic form is not used, the cabinet shall record information for recertification to determine continuing eligibility for K-TAP [as established in 921 KAR 3:030, or] by using form [Form, "PR-1, Program Recertification"].

Section 2. Continuing Eligibility. (1) The recipient shall be responsible for reporting, within ten (10) calendar days, any change in circumstances which may affect eligibility or the amount of payment.

(2) Eligibility shall be redetermined:

(a) If a report is received or information is obtained about changes in circumstances;

(b) Every twenty-four (24) months for SSP cases in which Supplemental Security Income or "SSI" is not received; and

(c) Every twelve (12) months for K-TAP cases.

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

(a) "KIM-100, KAMES Application", edition 8/10;

(b) "PA-77, Intent to Apply for Medicaid and/or K-TAP (Cash Assistance)", edition 8/10; and

(c) "PR-1, Program Recertification", edition 1/03 [is incorporated by reference].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

PATRICIA R. WILSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: July 6, 2010

FILED WITH LRC: July 23, 2010 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 21, 2010 at 9 a.m. in the Conference Suite C, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 14, 2010, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is

made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business September 30, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502)-564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Dearing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures used to determine initial and continuing eligibility for public assistance programs, Kentucky Transitional Assistance Program (K-TAP) and State Supplemental Program for persons who are aged, blind, or have a disability (State Supplementation or SSP).

(b) The necessity of this administrative regulation: This administrative regulation is needed to establish the process for eligibility determination and redetermination for individuals receiving public assistance.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by prescribing the processes for application and initial and ongoing eligibility determinations for the public assistance programs, K-TAP and State Supplementation.

(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 through its outline of eligibility determination and redetermination processes for K-TAP and State Supplementation.

(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 is being amended to incorporate by reference form PA-77, Intent to Apply for Medicaid and/or K-TAP (Cash Assistance), and the application for the Kentucky Automated Management and Eligibility System (KAMES), form KIM-100, KAMES Application. The amendment also makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary due to federally required changes to the application form and processes used in the Supplemental Nutrition Assistance Program (formerly called the Food Stamp Program) on August 1, 2010, as provided in the final rule issued January 2010 for the Farm Security and Rural Investment Act of 2002. The amendment ensures compliance with the new federal requirements with consideration to the least impact to individuals who apply for other public assistance programs, such as K-TAP, Medicaid, and State Supplementation.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by ensuring compliance and coordination between federal application and eligibility process requirements for K-TAP and State Supplementation with other public assistance programs.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the administration of the statutes by prescribing initial and ongoing eligibility application and determination processes for K-TAP and State Supplementation in conformity and consideration of federal requirements governing the Supplemental Nutrition Assistance and Medicaid Programs.

(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 families who are receiving assistance from K-TAP and SSP. Including the PA-77 and KIM-100 will affect Kinship Care and Medicaid. In May 2010, there were 3,668 K-TAP, 354 Kinship Care, 205 SSP and 28,015 Medicaid applications taken.

(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 amendment to this administrative regulation will not require a new action on the part of affected entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will create no cost to affected entities. As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation will ensure compliance with new federal requirements governing the application and eligibility processes for the Supplemental Nutrition Assistance Program and will coordinate that compliance with other public assistance programs, K-TAP and State Supplementation, to avoid duplicative application forms and processes for affected entities.

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

(a) Initially: The amendment to this administrative regulation is technical and conforming in nature and does not have a fiscal impact.

(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and does not have a fiscal impact.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Title IV-A or TANF, state general funds used to meet Maintenance of Effort for Title IV-A or TANF requirements, and state general funds for State Supplementation are the funding source for this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 601-619

2. State compliance standards. KRS 194A.050(1), 205.200(2)

3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? 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. The justification for the imposition of a stricter standard, or additional or different responsibilities or requirements, is not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services 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 194A.050(1), 205.010, 205.200, 205.245, and 42 U.S.C. 601-619

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The K-TAP program has been operational since October 1996 and does not directly generate any revenue. The State Supplementation program has been operational since December 1973. This administrative regulation will not generate any additional revenues in subsequent years.

(c) How much will it cost to administer this program for the first year? The K-TAP program has been operational since October 1996. The State Supplementation program has been operational since December 1973. This administrative regulation will not require any additional cost in the first year. The amendment to this administrative regulation provides for the avoidance of federal financial penalty.

(d) How much will it cost to administer this program for subsequent years? The K-TAP program has been operational since October 1996. The State Supplementation program has been operational since December 1973. This administrative regulation will not require any additional costs in subsequent years. The amendment to this administrative regulation provides for the avoidance of federal financial penalty.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**CABINET FOR HEALTH & FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(Amendment)**

921 KAR 3:030. Application process.

RELATES TO: KRS 116.048, 7 C.F.R. 273.2, 273.10, 42 U.S.C. 1973gg-5, 7 U.S.C. 2020(e)(2)(B)(ii), (iii), (iv), 42 U.S.C. 2000d, Presidential EO 13166

STATUTORY AUTHORITY: KRS 116.048(1), 194A.050(1), 7 C.F.R. 271.4, 7 U.S.C. 2020(e)(2)(B), 7 U.S.C. 2011-2029, 42 U.S.C. 1973gg-5

EFFECTIVE DATE: July 23, 2010

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 7 U.S.C. 2011 to 2029 and 7 C.F.R. 271.4 authorize the cabinet to administer a Food Stamp Program and prescribes the manner in which the program shall be implemented. 7 U.S.C. 2020(e)(2)(B) requires the cabinet to develop a uniform application process. KRS 116.048(1) designates the cabinet as a voter registration agency in accordance with 42 U.S.C. 1973gg-5. This administrative regulation establishes the application and the voter registration processes used by the cabinet in the administration of the Food Stamp Program.

Section 1. Right to Apply or Reapply. (1) An individual shall

have the right to apply or reapply for food stamp benefits on the same day that the household first contacts the Department for Community Based Services (DCBS) office in person during office hours.

(2) The cabinet shall make the application process readily accessible to a household.

(3) In accordance with the procedures described in 920 KAR 1:070, interpreter services shall be provided for a person who is:

(a) Deaf; or

(b) Hard of hearing.

(4) In accordance with 42 U.S.C. 2000d and Presidential EO 13166, interpreter services shall be provided for a person who is Limited English Proficient.

(5) An application shall be considered filed if:

~~(a) A FS-1, Application for SNAP, [a KIM-77, Intent to Apply, or a KIM-100, KAMES Application,] containing the name, address, and signature of the applicant[and any applicable supplements,] is received by a DCBS office; or~~

(b) Application for benefits and another public assistance program is made in accordance with 921 KAR 2:040 and Section 6 of this administrative regulation.

(6) An application shall be processed after the:

(a) Applicant or representative is interviewed;

(b) Required information and verification for the application is provided to the DCBS office; and

(c) Application and related documents are received by the ~~[appropriate]~~ DCBS office, as specified in Section 3(1) of this administrative regulation.

Section 2. Who May Sign an Application. An application for food stamps shall be signed by:

(1) An adult or emancipated child who is a responsible member of the household; or

(2) The household's authorized representative.

Section 3. Where an Application is Filed. (1) Except as provided in subsection (2) of this section, an application shall be filed in any DCBS office ~~[and processed in the county in which an applicant resides].~~

(2) A concurrent application for Supplemental Security Income (SSI) and Food Stamps shall be filed in the service area office of the Social Security Administration.

Section 4. Prompt Action on an Application. The cabinet shall provide an eligible household that completes the initial food stamp application process an opportunity to participate as soon as possible. The cabinet shall not provide an opportunity to participate later than:

(1) Thirty (30) days after the application is filed for a household ineligible for expedited services; or

(2) The fifth calendar day following the date an application is filed for a household eligible for expedited services.

Section 5. Expedited Service. The cabinet shall provide expedited services to a household that is eligible in accordance with 7 C.F.R. 273.2(i).

Section 6. Public Assistance Application Process. (1) A household in which every member is applying for Kentucky Transitional Assistance Program (KTAP) shall be allowed to simultaneously apply for food stamp benefits. A single interview shall be conducted for both programs.

(2) Time standards specified in Section 4 of this administrative regulation shall not apply to a public assistance application. A public assistance application shall be governed by the time standards specified in 921 KAR 2:035, Section 4.

(3) A household in which every member receives, or is authorized to receive, SSI shall be considered categorically eligible unless:

(a) The entire household is institutionalized; ~~1. Institutionalized; or~~

~~2. Disqualified from receiving food stamps; or~~

(b) A household member is ineligible due to a drug-related felony conviction;

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(c) A household member is disqualified due to an intentional program violation specified in 921 KAR 3:010; or

(d) The head of the household is disqualified for failure to comply with the work requirements specified in 921 KAR 3:042.

(4) A household in which any member receives, or is authorized to receive cash, in-kind, or other benefits funded under Temporary Assistance for Needy Families Block Grant[temporary assistance for needy families] (TANF) shall be considered categorically eligible unless:

(a) The entire household is institutionalized[; or

1. Institutionalized; or]

2. Disqualified from receiving food stamps; or

(b) A household member is ineligible due to a drug-related felony conviction;

(c) A household member is disqualified due to an intentional program violation specified in 921 KAR 3:010; or

(d) The head of household is disqualified for failure to comply with the work requirements specified in 921 KAR 3:042.

(5) If verified by the program or service conferring categorical eligibility status, a categorically eligible household shall not be required to verify the following eligibility factors:

(a) Resources;

(b) Gross and net income[limits];

(c) Social Security number[information];

(d) Sponsored alien information; and

(e) Residency.

Section 7. Joint SSI and Food Stamp Application Process. A household in which every member is an applicant or recipient of SSI shall be allowed to simultaneously apply for both SSI and food stamps as specified in Section 3(2) of this administrative regulation.

Section 8. Voter Registration. (1) In accordance with KRS 116.048 and 42 U.S.C. 1973gg-5, a food stamp applicant or recipient shall be provided the opportunity to complete an application to register to vote or update current voter registration if the applicant or recipient is:

(a) Age eighteen (18) or over; and

(b) Not registered to vote or not registered to vote at his current address.

(2) PAFS-706, Voter Registration Rights and Declination, shall be utilized to document a Food Stamp Program applicant or recipient's choice to:

(a) Register to vote[;or]

(b) Not register to vote; or

(c) Indicate that they are currently registered to vote.

(3) A voter registration application issued by the Board of Elections shall be completed if a Food Stamp Program applicant or recipient wants to:

(a) Register to vote; or

(b) Update voter registration to provide a new address.

(4) The voter registration process shall not apply to an individual not included in the assistance application, such as an authorized representative.

(5) All information utilized in the voter registration process shall remain confidential and be used only for voter registration purposes.

(6) The State Board of Elections shall approve the application to register to vote and send a confirmation or denial notice to the voter registration applicant.

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

(a) "FS-1, Application for SNAP", edition 8/10; and~~"KIM-77, Intent to Apply", edition 8/08;~~

~~(b) "KIM-100, KAMES Application", edition 8/08;~~

~~(c) "KIM-100, Supplement A, Representative/Interested Party", edition 8/08;~~

~~(d) "KIM-100, Supplement B, Utility/Shelter Information", edition 8/08;~~

~~(e) "KIM-100, Supplement C, Additional Members/Striker and Boarder Information", edition 8/08;~~

~~(f) "KIM-100, Supplement D, Farm/Self-Employment/Rental~~

~~Income", edition 8/08;~~

~~(g) "KIM-100, Supplement E, Vehicles", edition 8/08;~~

~~(h) "KIM-100, Supplement F, Emergency Shelter/Foster Care", edition 8/08;~~

~~(i) "KIM-100, Supplement G, Member General Information", edition 8/08;~~

~~(j) "KIM-100, Supplement H, IM Alien Information", edition 8/08;~~

~~(k) "KIM-100, Supplement I, State Supplementation/Pass Through", edition 8/08;~~

~~(l) "KIM-100, Supplement J, Long Term Care", edition 8/08;~~

~~(m) "KIM-100, Supplement L, General Deprivation", edition 8/08;~~

~~(n) "KIM-100, Supplement M, Incapacity/Unemployment", edition 8/08;~~

~~(o) "KIM-100, Supplement N, Deprivation", edition 8/08;~~

~~(p) "KIM-100, Supplement P, DSC Cooperation/Absence Verification", edition 8/08;~~

~~(q) "KIM-100, Supplement PP, AP Referral", edition 8/08;~~

~~(r) "KIM-100, Supplement Q, KWP/Work Registration", edition 8/08;~~

~~(s) "KIM-100, Supplement R, Earned Income", edition 8/08;~~

~~(t) "KIM-100, Supplement S, Unearned Income", edition 8/08;~~

~~(u) "KIM-100, Supplement SS, Lump Sum/Pass Income", edition 8/08;~~

~~(v) "KIM-100, Supplement T, Resources", edition 8/08;~~

~~(w) "KIM-100, Supplement U, Medical Expenses", edition 8/08;~~

~~(x) "KIM-100, Supplement V, Health Insurance", edition 8/08;~~

~~(y) "KIM-100, Supplement W, KAMES Integration Supplement - Look In & KenPAC", edition 8/08;~~

~~(z) "KIM-100, Supplement X, IM Nonmember", edition 8/08;~~

~~(aa) "KIM-100, Supplement XX, KAMES Integration Supplement - FS Non-members", edition 8/08;~~

~~(bb) "KIM-100, Supplement Y, Student Information", edition 8/08; and~~

~~(cc) "PAFS-706, Voter Registration Rights and Declination", edition 8/10[8/08].~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

PATRICIA R. WILSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: July 23, 2010

FILED WITH LRC: July 23, 2010 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 21, 2010 at 9 a.m. in the Conference Suite C, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 14, 2010, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business September 30, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Dearing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application and the voter registration

processes used by the cabinet in the administration of the Supplemental Nutrition Assistance Program (SNAP).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish uniform application standards for SNAP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing an application processes for SNAP and related voter registration processes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by establishing procedures used by the cabinet in the administration of SNAP and voter registration 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 incorporate by reference a new SNAP application form, FS-1, Application for SNAP; remove the current application KIM-100, KAMES Application, and form KIM-77, Intent to Apply, currently incorporated by reference; simplify and clarify form PAFS-706, Voter Registration Rights and Declination; and makes technical corrections.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary due to federally required changes to the application form and processes used in the Supplemental Nutrition Assistance Program (formerly called the Food Stamp Program) as provided in the final rule, issued January 2010, for the Farm Security and Rural Investment Act of 2002. The amendment ensures compliance with the new federal requirements, specifically the requirement for a state to make available a complete SNAP application on the state agency's website by August 1, 2010. The amendment also makes technical corrections to ensure alignment with application processes used in other public assistance programs and compliance with KRS 13A, and it simplifies the voter registration form in accordance with guidance received from the Kentucky Board of Elections.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the authorizing statutes by implementing the requirements of the federal final rule and outlining the cabinet's process for voter registration as required by KRS 116.048.

(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 through its compliance with federal requirements and alignment with other public assistance programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 779,000 individuals in 354,000 households are currently participating in SNAP in Kentucky. All SNAP recipients and potential applicants are 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: This amendment will not require any additional actions on the part of SNAP applicants or recipients.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment does not involve a cost to a SNAP applicant or recipient.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): SNAP applicants and recipients will benefit from the amendment to this administrative regulation by having available a simplified application form and a simplified Voter Registration Rights and Declination form.

(5) Provide an estimate of how much it will cost the administra-

tive body to implement this administrative regulation:

(a) Initially: No additional funding is required.

(b) On a continuing basis: No additional funding is required.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of the funding will be SNAP Federal Funds and matching General or State funds. The funding has been appropriated in the enacted budget.

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

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

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering is not applied because this administrative regulation will be applied in a like manner statewide

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 273.2, 7 U.S.C. 2011-2029, and 42 U.S.C. 1973gg-10.

2. State compliance standards. KRS 116.048, 194A.050(1)

3. Minimum or uniform standards contained in the federal mandate. The provisions of this administrative regulation comply with the Federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendment to 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. The justification for the imposition of a stricter standard, or additional or different responsibilities or requirements, is not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Contact Person: Justin Dearing

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services 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 116.048, 194A.050(1), 7 C.F.R. 271.4, 273.2, and U.S.C. 2011-2029.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation does not generate revenue and will not generate any additional revenue 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? This administrative regulation does not generate revenue and will not generate any additional revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? This amendment will not require any additional costs during the first year. The amendment to this administrative regulation provides for the avoidance of federal financial penalty.

(d) How much will it cost to administer this program for subse-

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quent years? This amendment will not require any additional costs during subsequent years. The amendment to this administrative regulation provides for the avoidance of federal financial penalty.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, JULY 15, 2010

FINANCE AND ADMINISTRATION CABINET
Kentucky Judicial Form Retirement System
(New Administrative Regulation)

4 KAR 1:010. General compliance with federal tax laws

RELATES TO: KRS 6.500, 6.505, 6.515, 6.520, 6.521, 6.525, 6.530, 6.535, 6.575, 6.577 21.345, 21.347, 21.350, 21.357, 21.360, 21.370, 21.375, 21.380, 21.385, 21.400, 21.405, 21.410, 21.415, 21.420, 21.425, 21.427, 21.440, 21.450, 21.460, 21.470, 21.480, 21.510, 21.525, 21.530, 21.540, 21.550, 21.560, 21.570, 26 U.S.C. 401(a)(8), (17), (25), (37), 401(h), 414(u), and 38 U.S.C. 4301-4334

STATUTORY AUTHORITY: KRS 21.530 and 21.540

NECESSITY, FUNCTION, AND CONFORMITY: KRS 21.540(2) authorizes the board of trustees of the Judicial Form Retirement System to promulgate administrative regulations, with retroactive effect if required by federal law, to conform the Kentucky Judicial Retirement Plan and the Kentucky Legislators Retirement Plan with federal law and to meet the qualification requirements under 26 U.S.C. 401(a). This administrative regulation establishes requirements to ensure compliance with federal tax laws.

Section 1. Definitions. (1) "Differential wage payment" is defined by 26 U.S.C. 3401(h)(2).

(2) "Plan" means the Kentucky Judicial Retirement Plan and the Kentucky Legislators Retirement Plan.

Section 2. Compliance with 26 U.S.C. 401(a)(8) for Forfeitures. In conformity with 26 U.S.C. 401(a)(8), any forfeitures of benefits by members or former members of the plan shall not be used to pay benefit increases.

Section 3. Compliance with 26 U.S.C. 401(a)(17) for Compensation Limit. (1) For years beginning on or after January 1, 1989, and before January 1, 1994, the annual compensation of each member taken into account for determining all benefits provided under the Plans for any plan year shall not exceed \$200,000. This limitation shall be adjusted by the Secretary at the same time and in the same manner as under 26 U.S.C. 415(d), except that the dollar increase in effect on January 1 of any calendar year shall be effective for plan years beginning with or within that calendar year, and the first adjustment to the \$200,000 limitation shall be effective on January 1, 1990.

(2)(a) For years beginning on or after January 1, 1994, the annual compensation of each member taken into account for determining all benefits provided under the Plans for any determination period shall not exceed \$150,000, as adjusted for the cost-of-living increases in accordance with 26 U.S.C. 401(a)(17)(B).

(b) For plan years beginning on or after January 1, 2002, the annual compensation of each member taken into account in determining all benefits provided under the Plans for any determination period shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with 26 U.S.C. 401(a)(17)(B).

(c) The cost-of-living adjustment in effect for a calendar year shall apply to any determination period beginning with or within that calendar year.

(3) If compensation for any prior determination period is taken into account in determining a members benefits for the current plan year, the compensation for that prior determination period shall be subject to the applicable annual compensation limit in effect for that prior period.

(a) For this purpose, in determining benefits in plan years beginning on or after January 1, 1989, and before January 1, 1994, the annual compensation limit in effect for determination periods beginning before January 1, 1989, shall be \$200,000.

(b) In determining benefits in plan years beginning on or after January 1, 1994, and before January 1, 2002, the annual compensation limit in effect for determination periods beginning before January 1, 2002, shall be \$150,000.

(c) In determining benefits in plan years beginning on or after

January 1, 2002, the annual compensation limit in effect for determination periods beginning before that date shall be \$200,000.

Section 4. Compliance with 26 U.S.C. 401(a)(25) for Actuarial Assumptions. Kentucky Judicial Form Retirement System shall determine the amount of any benefit that is determined on the basis of actuarial assumptions using assumptions adopted by the board by rule. Plan benefits shall not be subject to employer discretion.

Section 5. Compliance with 26 U.S.C. 401(h). (1) No diversion. At any time prior to the satisfaction of all liabilities under the Plan to provide for the payment of medical benefits described in 26 U.S.C. 401(h), the corpus or income of the medical benefits account shall not be used for, or diverted to, any purpose other than the providing of Plan benefits.

(2) Reversion. Any amounts which are contributed to fund medical benefits described in 26 U.S.C. 401(h) and which remain in the medical benefits account upon the satisfaction of all liabilities arising out of the operation of the medical benefits portion of the Plan shall be returned to the Commonwealth.

(3) Forfeitures. If a members interest in the medical benefits account is forfeited prior to termination of the Plan, an amount equal to the amount of the forfeiture shall be applied as soon as possible to reduce contributions to fund the medical benefits described in 26 U.S.C. 401(h).

Section 6. Compliance with 26 U.S.C. 414(u) for Reemployed Veterans. (1) Effective December 12, 1994, contributions, benefits, and service credit with respect to qualified military service shall be governed by 26 U.S.C. 414(u) and the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. 4301-4334

(2) Effective for deaths on or after January 1, 2007, if a member dies while performing qualified military service (as defined in 26 U.S.C. 414(u)), the survivors of the member shall be entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) under the Plans had the member resumed and then terminated employment on account of death.

(3) Effective for Plan Years beginning on or after July 1, 2009, to the extent permitted by 26 U.S.C. 414(u)(12), an individual receiving a differential wage payment shall be treated as an employee of the employer making the payment, and the differential wage payment shall be treated as compensation solely for Internal Revenue Code purposes and not for determining Plan benefits.

JOSEPH E. LAMBERT, Chairman

APPROVED BY AGENCY: August 12, 2010

FILED WITH LRC: August 12, 2010 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2010 at 10 a.m. at Reed Weitkamp Schell & Vice PLLC, 500 W. Jefferson Street, Suite 2400, Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by September 17, 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 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 September 30, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Alan D. Pauw, Legal Counsel, Kentucky Judicial Form Retirement System, Reed Weitkamp Schell & Vice PLLC, 500 W. Jefferson Street, Suite 2400, Louisville, Kentucky 40202, phone (502) 589-1000, fax (502) 562-2200.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: Alan D. Pauw

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes Kentucky Judicial Form Retirement Systems compliance with specified provisions of the Internal Revenue Code in order for Kentucky Judicial Retirement Plan and Kentucky Legislators Retirement Plan to maintain their tax qualified status as public defined benefit plans under 26 U.S.C. Section 401(a).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish compliance with specified provisions of the Internal Revenue Code.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute because it conforms Kentucky Judicial Retirement Plan and Kentucky Legislators Retirement Plan with federal statutes and regulations to maintain their tax qualified status as public defined benefit plans under 26 U.S.C. 401(a).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing Kentucky Judicial Form Retirement Systems compliance with federal law in order for Kentucky Judicial Retirement Plan and Kentucky Legislators Retirement Plan to maintain their tax qualified status as public defined benefit plans under 26 U.S.C. 401(a).

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

(a) How the amendment will change this existing administrative regulation: Not applicable, this is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Not applicable, this is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable, this is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable, this is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to members of the Plans. There are approximately 830 members and retirees in the two Plans.

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

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

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Members will be entitled to Plan benefits as provided by statute.

(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 implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid from the administrative 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 or directly or indirectly in-

crease any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, all members are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Judicial Form Retirement System; Kentucky Judicial Retirement Plan; Kentucky Legislators Retirement Plan.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 21.540, 26 U.S.C. 401(a)(8), (17), (25), (37), 401(h), 26 414(u), and 38 U.S.C. 4301-4334.

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? No new program; no additional costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 26 U.S.C. 401(a)(8), (9), (16), (17), (25), (31), (37) and 401(h), 414(u), and 38 U.S.C. 4301-4334.

2. State compliance standards. None

3. Minimum or uniform standards contained in the federal mandate. The above referenced statutes and regulations require compliance with the requirements for plan documents (state statutes and administrative regulations).

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

FINANCE AND ADMINISTRATION CABINET Kentucky Judicial Form Retirement System (New Administrative Regulation)

4 KAR 1:020. Minimum distribution.

RELATES TO: KRS 6.525, 21.385 and 21.540, 26 C.F.R. 1.401(a)(9)-9, 26 U.S.C. 401(a)(9), 414(d)

STATUTORY AUTHORITY: KRS 21.540

NECESSITY, FUNCTION, AND CONFORMITY: KRS 21.540(2) authorizes the board of trustees of the Judicial Form Retirement System to promulgate administrative regulations, with retroactive effect if required by federal law, to conform the Kentucky Judicial Retirement Plan and the Kentucky Legislators Retirement Plan with federal law and to meet the qualification requirements under 26 U.S.C. 401(a). This administrative regulation establishes minimum distribution requirements in compliance with

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26 U.S.C. 401(a)(9).

Section 1. Definitions. (1) "Member" means a member of a retirement fund established in accordance with KRS 6.500 to 6.577 or KRS 21.345 to 21.580 and administered by the Kentucky Judicial Form Retirement System.

(2) "Plan" means the Kentucky Judicial Retirement Plan and the Kentucky Legislators Retirement Plan.

(3) "Required beginning date" means April 1 of the calendar year following the later of:

(a) The calendar year in which the member attains age seventy and one-half (70 1/2); or

(b) The calendar year in which the member retires.

Section 2. (1) This administrative regulation shall apply to any member of a fund established in accordance with KRS 6.500 to 6.577, or 21.345 to 21.580.

(2) Effective January 1, 2003, the Plans shall pay all benefits in accordance with a good faith interpretation of the requirements of 26 U.S.C. 401(a)(9) and 1.401(a)(9)-1 to 1.401(a)(9)-9, as applicable to a governmental plan within the meaning of 26 U.S.C. 414(d). The requirements of 26 U.S.C. 401(a)(9) shall take precedence over any inconsistent provisions of KRS 6.500 to 6.577, and 21.345 to 21.580.

(3) The members entire interest shall be distributed over the members life or lives of the member and the members beneficiary, or over a period not extending beyond the life expectancy of the member or of the member and the members beneficiary.

Section 3. (1) Except as provided in subsection (2) of this section, the members entire interest shall be distributed, or begin to be distributed, to the member no later than the members required beginning date.

(2) If the member dies before distribution begins and there is a qualified beneficiary, the members entire interest shall be distributed, or begin to be distributed, no later than as follows:

(a) Except as provided in subsection (3) of this section, if the members surviving spouse is the members sole beneficiary, distributions to the surviving spouse shall begin by the later of:

1. December 31 of the calendar year immediately following the calendar year in which the member died; or

2. December 31 of the calendar year in which the member would have attained age seventy and one-half (70 1/2);

(b) If the members surviving spouse is not the members sole beneficiary, distributions to the members beneficiary shall begin by December 31 of the calendar year immediately following the calendar year in which the member died; or

(c) If there is not a beneficiary as of September 30 of the year following the year of the members death, the members entire interest shall be distributed by December 31 of the calendar year containing the fifth anniversary of the members death.

(3) If a member dies after the required distribution of benefits has begun but before the recoupment of the members personal contributions, the remaining portion of the members interest shall be distributed at least as rapidly as under the method of distribution before the members death.

(4)(a) For purposes of subsections (2) and (3) of this section, distributions shall be required to begin on the members required beginning date.

(b) If annuity payments irrevocably commence to the member before the members required beginning date, or to the members surviving spouse before the date distributions are required to begin to the surviving spouse pursuant to subsection (2)(a) of this section, the date distributions are considered to begin shall be the date distributions actually commence.

Section 4. (1) If the members interest is paid in the form of annuity distributions, payments pursuant to the annuity shall satisfy the following requirements:

(a) The annuity distributions shall be paid in monthly periodic payments;

(b) The distribution period shall be over a life (or lives) or over a period certain not longer than the period described in this section or Section 5 of this administrative regulation; and

(c) Payments shall increase only as follows:

1. By the annual percentage increase provided for pursuant to KRS 6.500 to 6.577 and 21.345 to 21.580;

2. To the extent of the reduction in the amount of the members payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period described in this section dies;

3. To provide cash refunds of employee contributions upon the members death; or

4. To pay any increased benefits that result from a plan amendment.

(2)(a) The amount that shall be distributed on or before the members required beginning date, or if the member dies before distributions begin, the date distributions are required to begin under Section 3(2) of this administrative regulation, shall be the payment that is required for one (1) month.

(b) The second payment shall not be required to be made until the end of the next payment interval even if that payment interval ends in the next calendar year.

(c) All of the members benefit accruals as of the last day of the first distribution calendar year shall be included in the calculation of the amount of the annuity payments for months ending on or after the members required beginning date.

Section 5. (1) The amount of annuity paid to a members beneficiary shall not exceed the maximum determined pursuant to the incidental death benefit requirement of 26 U.S.C. 401(a)(9)(G), and the minimum distribution incidental benefit rule established in 26 C.F.R. 1.401(a)(9)-6, Q&A-2.

(2) The death and disability benefits provided by the Plans shall be limited by the incidental benefit rule established in 26 U.S.C. 401(a)(9)(G) and 1.401-1(b)(1)(i).

JOSEPH E. LAMBERT, Chairman

APPROVED BY AGENCY: August 12, 2010

FILED WITH LRC: August 12, 2010 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2010 at 10 a.m. at Reed Weitkamp Schell & Vice PLLC, 500 W. Jefferson Street, Suite 2400, Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by September 17, 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 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 September 30, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Alan D. Pauw, Legal Counsel, Kentucky Judicial Form Retirement System, Reed Weitkamp Schell & Vice PLLC, 500 W. Jefferson Street, Suite 2400, Louisville, Kentucky 40202, phone (502) 589-1000, fax (502) 562-2200.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: Alan D. Pauw

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes Kentucky Judicial Form Retirement Systems compliance with specified provisions of the Internal Revenue Code in order for Kentucky Judicial Retirement Plan and Kentucky Legislators Retirement Plan to maintain their tax qualified status as public defined benefit plans under 26 U.S.C. Section 401(a).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish compliance with specified provisions of the Internal Revenue Code.

(c) How this administrative regulation conforms to the content

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of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute because it conforms Kentucky Judicial Retirement Plan and Kentucky Legislators Retirement Plan with federal statutes and regulations to maintain their tax qualified status as public defined benefit plans under 26 U.S.C. 401(a) and 414(d).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing Kentucky Judicial Form Retirement Systems compliance with federal law in order for Kentucky Judicial Retirement Plan and Kentucky Legislators Retirement Plan to maintain their tax qualified status as public defined benefit plans under 26 U.S.C. 401(a) and 414(d).

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

(a) How the amendment will change this existing administrative regulation: Not applicable, this is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Not applicable, this is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable, this is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable, this is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to members of the Plans. There are approximately 830 members and retirees in the two Plans.

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

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

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Members will be entitled to Plan benefits as provided by statute.

(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 implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid from the administrative 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 or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, all members are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Judicial Form Retirement System; Kentucky Judicial Retirement Plan; Kentucky Legislators Retirement Plan.

3. Identify each state or federal statute or federal regulation

that requires or authorizes the action taken by the administrative regulation. KRS 21.540, 26 U.S.C. 401(a)(9).

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? No new program; no additional costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 26 U.S.C. 401(a)(9).

2. State compliance standards. None

3. Minimum or uniform standards contained in the federal mandate. The above referenced statutes and regulations require compliance with the requirements for plan documents (state statutes and administrative regulations).

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

FINANCE AND ADMINISTRATION CABINET Kentucky Judicial Form Retirement System (New Administrative Regulation)

4 KAR 1:030. Rollovers and transfers to other plans.

RELATES TO: KRS 6.525, 6.515, 21.370, 21.460, 21.540, 26 U.S.C. 401(a)(31), 402(c), 403(a), (b), 408, 408A, and 457(b).

STATUTORY AUTHORITY: KRS 21.540

NECESSITY, FUNCTION, AND CONFORMITY: KRS 21.540(2) authorizes the board of trustees of the Judicial Form Retirement System to promulgate administrative regulations, with retroactive effect if required by federal law, to conform the Kentucky Judicial Retirement Plan and the Kentucky Legislators Retirement Plan with federal law and to meet the qualification requirements under 26 U.S.C. 401(a). This administrative regulation establishes what constitutes eligible rollover distributions, eligible retirement plans, distributions, distributees, and direct rollovers for purposes of compliance with 26 U.S.C. 401(a).

Section 1. Definition. "Plan" means the Kentucky Judicial Retirement Plan and the Kentucky Legislators Retirement Plan.

Section 2. Effective January 1, 1993, "eligible rollover distribution" shall include any distribution of all or any portion of the balance to the credit of the distributee, except:

(1) A distribution that is one (1) of a series of substantially equal periodic payments made at least annually:

(a) For the life or life expectancy of the distributee and the distributees beneficiary;

(b) For the joint lives or joint life expectancy of the distributee and the distributees beneficiary; or

(c) For a specified period of ten (10) years or more;

(2) Any distribution to the extent that the distribution shall be

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required pursuant to 26 U.S.C. 401(a)(9), except as provided in Section 3 of this administrative regulation;

(3) The portion of any distribution that is not includable in gross income; or

(4) Any other distribution that is reasonably expected to total less than \$200 during the year.

Section 3. (1) Effective January 1, 2002, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includable in gross income. This portion may be transferred:

(a) Only to:

1. An individual retirement account or annuity described in 26 U.S.C. 408(a) or (b);

2. A qualified defined contribution plan described in 26 U.S.C. 401(a);

3. On or after January 1, 2007, a qualified defined benefit plan described in 26 U.S.C. 401(a); or

4. An annuity contract described in 26 U.S.C. 403(b); and

(b) To an account or plan provided for in paragraphs (a)2. to 4. of this subsection that agrees to separately account for amounts so transferred, and earnings on those amounts, including separately accounting for the portion of the distribution:

1. That is includable in gross income; and

2. That is not so includable.

(2) Effective January 1, 1993, "eligible retirement plan" shall include any of the following that accepts the distributees eligible rollover distribution:

(a) An individual retirement account described in 26 U.S.C. 408(a);

(b) An individual retirement annuity described in 26 U.S.C. 408(b);

(c) An annuity plan described in 26 U.S.C. 403(a);

(d) A qualified trust described in 26 U.S.C. 401(a);

(e) Effective January 1, 2002, an annuity contract described in 26 U.S.C. 403(b);

(f) Effective January 1, 2002, a plan eligible under 26 U.S.C. 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from the Plan; or

(g) Effective January 1, 2008, a Roth IRA described in 26 U.S.C. 408A.

(3)(a) To be considered a distributee, a person shall be:

1. A member; or

2. Effective July 1, 2010, a nonspouse beneficiary who is a designated beneficiary as defined by 26 U.S.C. 401(a)(9)(E).

a. A nonspouse beneficiary shall rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution; and

b. The account or annuity shall be treated as an "inherited" individual retirement account or annuity.

(b) "Direct rollover" shall include a payment by the plan to the eligible retirement plan specified by the distributee.

JOSEPH E. LAMBERT, Chairman

APPROVED BY AGENCY: August 12, 2010

FILED WITH LRC: August 12, 2010 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2010 at 10 a.m. at Reed Weitkamp Schell & Vice PLLC, 500 W. Jefferson Street, Suite 2400, Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by September 17, 2010, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by 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 September

30, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Alan D. Pauw, Legal Counsel, Kentucky Judicial Form Retirement System, Reed Weitkamp Schell & Vice PLLC, 500 W. Jefferson Street, Suite 2400, Louisville, Kentucky 40202, phone (502) 589-1000, fax (502) 562-2200.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: Alan D. Pauw

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes Kentucky Judicial Form Retirement System=s compliance with specified provisions of the Internal Revenue Code in order for Kentucky Judicial Retirement Plan and Kentucky Legislators Retirement Plan to maintain their tax qualified status as public defined benefit plans under 26 U.S.C. Section 401(a).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish compliance with specified provisions of the Internal Revenue Code.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute because it conforms Kentucky Judicial Retirement Plan and Kentucky Legislators Retirement Plan with federal statutes and regulations to maintain their tax qualified status as public defined benefit plans under 26 U.S.C. 401(a) and 402.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing Kentucky Judicial Form Retirement System=s compliance with federal law in order for Kentucky Judicial Retirement Plan and Kentucky Legislators Retirement Plan to maintain their tax qualified status as public defined benefit plans under 26 U.S.C. 401(a) and 402.

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

(a) How the amendment will change this existing administrative regulation: Not applicable, this is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Not applicable, this is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable, this is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable, this is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to members of the Plans. There are approximately 830 members and retirees in the two Plans.

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

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

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Members will be entitled to Plan benefits as provided by statute.

(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 implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid from the

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administrative 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 or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, all members are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Judicial Form Retirement System; Kentucky Judicial Retirement Plan; Kentucky Legislators Retirement Plan.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 21.540, 26 U.S.C. 401(a)(31), 402(c), 403(a), (b), 408, 408A, and 457(b).

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? No new program; no additional costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 26 U.S.C. 401(a)(31).

2. State compliance standards. None

3. Minimum or uniform standards contained in the federal mandate. The above referenced statutes and regulations require compliance with the requirements for plan documents (state statutes and administrative regulations).

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

FINANCE AND ADMINISTRATION CABINET Kentucky Judicial Form Retirement System (New Administrative Regulation)

4 KAR 1:040. Limitation on Benefits

RELATES TO: KRS 6.500, 6.505, 6.515, 6.520, 6.521, 6.525, 6.530, 6.535, 6.575, 6.577 21.345, 21.347, 21.350, 21.357, 21.360, 21.370, 21.375, 21.380, 21.385, 21.400, 21.405, 21.410, 21.415, 21.420, 21.425, 21.427, 21.440, 21.450, 21.460, 21.470, 21.480,

21.510, 21.525, 21.530, 21.540, 21.550, 21.560, 21.570, 26 U.S.C. 401(a)(16), and 415.

STATUTORY AUTHORITY: KRS 21.540

NECESSITY, FUNCTION, AND CONFORMITY: KRS 21.540(2) authorizes the board of trustees of the Judicial Form Retirement System to promulgate administrative regulations, with retroactive effect if required by federal law, to conform the Kentucky Judicial Retirement Plan and the Kentucky Legislators Retirement Plan with federal law and to meet the qualification requirements under 26 U.S.C. 401(a). This administrative regulation establishes requirements for the administration of testing contribution and benefit limits in accordance with 26 U.S.C. 415.

Section 1. Definitions. (1) "415(b) limit" means the limitation on benefits established by 26 U.S.C. 415(b).

(2) "415(c) limit" means the limitation on annual additions established by 26 U.S.C. 415(c).

(3) "Annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to 26 U.S.C. 415(n)) and to rollover contributions (as defined in 26 U.S.C. 415(b)(2)(A)), and with the benefit attributable determined in accordance with Treasury Regulations located in 26 C.F.R. 1.415(b)-1.

(4)(a) "Permissive service credit" means service credit:

1. Recognized by the Plan for purposes of calculating a member's benefit under the Plan;

2. Which the member has not received under the Plan; and

3. Which the member may receive only by making a voluntary additional contribution, in an amount determined under the Plan, which does not exceed the amount necessary to fund the benefit attributable to the service credit.

(b) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, such term may include service credit for periods for which there is no performance of service, and, notwithstanding paragraph (a)2 of this subsection, may include service credited in order to provide an increased benefit for service credit which a member is receiving under the Plan.

(5) Plan means the Kentucky Judicial Retirement Plan and the Kentucky Legislators Retirement Plan.

Section 2. This administrative regulation shall apply to the Plans as of July 1, 2007. Subject to the provisions of this administrative regulation, benefits paid from, and employee contributions made to, these Plans shall not exceed the maximum benefits and the maximum annual addition, respectively, as applicable under 26 U.S.C. 415 and Treasury Regulations located in 26 C.F.R. 1.415(a)-1 to 1.415(j)-1.

Section 3. Basic 415(b) Limitation. (1) A member shall not receive an annual benefit that exceeds the dollar amount specified in 26 U.S.C. 415(b)(1)(A), subject to the applicable adjustments in 26 U.S.C. 415(b) and Treasury Regulations located in 26 C.F.R. 1.415(a)-1 to 1.415(j)-1 and subject to any additional limits that are specified in this administrative regulation.

(2) A member's annual benefit payable in any limitation year from a Plan shall not be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to 26 U.S.C. 415(d) and the Treasury Regulations located in 26 C.F.R. 1.415(a)-1 to 1.415(j)-1.

Section 4. Adjustments to Basic 415(b) Limitation for Form of Benefit. If the benefit under the Plan is other than the form specified in Section 3 of this administrative regulation, the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed in Treasury Regulations located in 26 C.F.R. 1.415(b)-1.

Section 5. Benefits Not Taken into Account for 415(b) Limit. (1) For purposes of this administrative regulation, the following benefits shall not be taken into account in applying these limits:

(a) Any ancillary benefit which is not directly related to retirement income benefits;

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(b) That portion of any joint and survivor annuity if the annuity is a qualified joint and survivor annuity; or

(c) Any other benefit not required under 26 U.S.C. 415(b)(2) and Treasury Regulations located in 26 C.F.R. 1.415(b)-1 to be taken into account for purposes of the limitation of 26 U.S.C. 415(b)(1).

Section 6. Other Adjustments in 415(b) Limitation. (1) If the members retirement benefits become payable before age sixty-two (62), the limit prescribed by this administrative regulation shall be reduced in accordance with Treasury Regulations located in 26 C.F.R. 1.415(b)-1 pursuant to the provisions of 26 U.S.C. 415(b), so that the limit (as so reduced) equals an annual straight life benefit (when the retirement income benefit begins) which is equivalent to a \$160,000 (as adjusted) annual benefit beginning at age sixty-two (62).

(2) The reductions provided for in subsection (1) of this section shall not be applicable to any preretirement disability benefits or preretirement death benefits.

Section 7. Less than Ten (10) Years of Service Adjustment for 415(b) Limitations. (1) The maximum retirement benefits payable to any member who has completed less than ten (10) years of service shall be the amount determined under Section 4 of this administrative regulation multiplied by a fraction, the numerator of which is the number of the members years of service and the denominator of which is ten (10).

(2) The reduction provided by this section shall not reduce the maximum benefit below ten (10) percent.

(3) The reduction provided by this section shall not be applicable to any preretirement disability benefits or preretirement death benefits.

Section 8. Service Purchases Under Section 415(n). (1) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one (1) or more contributions to purchase permissive service credit under the Plan, the requirements of 26 U.S.C. 415(n) shall be treated as met only if:

(a) The requirements of 26 U.S.C. 415(b) are met, determined by treating the accrued benefit derived from all these contributions as an annual benefit for purposes of the 415(b) limit; or

(b) The requirements of 26 U.S.C. 415(c) are met, determined by treating all these contributions as annual additions for purposes of the 415(c) limit.

(2) For purposes of applying this section, the Plan shall not fail to meet the reduced limit under 26 U.S.C. 415(b)(2)(C) solely by reason of this section and shall not fail to meet the percentage limitation under 26 U.S.C. 415(c)(1)(B) solely by reason of this section.

(3) The Plan shall fail to meet the requirements of this section if:

(a) More than five (5) years of nonqualified service credit are taken into account for purposes of this section; or

(b) Any nonqualified service credit is taken into account under this section before the member has at least five (5) years of participation under the Plan.

(4) For purposes of subsection (3) of this section, effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, nonqualified service credit shall be the permissive service credit other than that allowed with respect to:

(a) Service as an employee of the Government of the United States, any state or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in 26 U.S.C. 415(k)(3));

(b) Service as an employee (other than as an employee described in paragraph (a) of this subsection) of an educational organization described in 26 U.S.C. 170(b)(1)(A)(ii) which is a public, private, or sectarian school which provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed;

(c) Service as an employee of an association of employees who are described in paragraph (a) of this subsection; or

(d) Military service (other than qualified military service under 26 U.S.C. 414(u)) recognized by the Plan.

(5) For service described in subsection (4)(a), (b), or (c) of this section, the service shall be nonqualified service if recognition of the service would cause a member to receive a retirement benefit for the same service under more than one plan.

(6) For a trustee-to-trustee transfer after December 31, 2001, to which 26 U.S.C. 403(b)(13)(A) or 457(e)(17)(A) applies (without regard to whether the transfer is made between plans maintained by the same employer):

(a) The limitations of subsection (3) of this section shall not apply in determining whether the transfer is for the purchase of permissive service credit; and

(b) The distribution rules applicable to the Plan shall apply to these amounts and any benefits attributable to these amounts.

Section 9. Repayments of Cashouts. Any repayment of contributions (including interest) to the Plan with respect to an amount previously refunded upon a forfeiture of service credit under the Plan or another governmental plan maintained by the Commonwealth or a local government within the Commonwealth shall not be taken into account for purposes of the 415(b) or (c) limits.

JOSEPH E. LAMBERT, Chairman

APPROVED BY AGENCY: August 12, 2010

FILED WITH LRC: August 12, 2010 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2010 at 10:00 A.M. at Reed Weitkamp Schell & Vice PLLC, 500 W. Jefferson Street, Suite 2400, Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by September 17, 2010, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by 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 September 30, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Alan D. Pauw, Legal Counsel, Kentucky Judicial Form Retirement System, Reed Weitkamp Schell & Vice PLLC, 500 W. Jefferson Street, Suite 2400, Louisville, Kentucky 40202, phone (502) 589-1000, fax (502) 562-2200.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: Alan D. Pauw

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes Kentucky Judicial Form Retirement Systems compliance with specified provisions of the Internal Revenue Code in order for Kentucky Judicial Retirement Plan and Kentucky Legislators Retirement Plan to maintain their tax qualified status as public defined benefit plans under 26 U.S.C. Section 401(a).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish compliance with specified provisions of the Internal Revenue Code.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute because it conforms Kentucky Judicial Retirement Plan and Kentucky Legislators Retirement Plan with federal statutes and regulations to maintain their tax qualified status as public defined benefit plans under 26 U.S.C. 401(a) and 415.

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

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trative regulation will assist in the effective administration of the statutes by establishing Kentucky Judicial Form Retirement System=s compliance with federal law in order for Kentucky Judicial Retirement Plan and Kentucky Legislators Retirement Plan to maintain their tax qualified status as public defined benefit plans under 26 U.S.C. 401(a) and 415.

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

(a) How the amendment will change this existing administrative regulation: Not applicable, this is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Not applicable, this is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable, this is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable, this is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to members of the Plans. There are approximately 830 members and retirees in the two Plans.

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

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

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Members will be entitled to Plan benefits as provided by statute.

(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 implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid from the administrative 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 or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, all members are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Judicial Form Retirement System; Kentucky Judicial Retirement Plan; Kentucky Legislators Retirement Plan.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 21.540, 26 U.S.C. 401(a)(16), and 415.

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 gen-

erate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

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

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

(d) How much will it cost to administer this program for subsequent years? No new program; no additional costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 26 U.S.C. 401(a)(16), and 415.

2. State compliance standards. None

3. Minimum or uniform standards contained in the federal mandate. The above referenced statutes and regulations require compliance with the requirements for plan documents (state statutes and administrative regulations).

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

PERSONNEL CABINET (New Administrative Regulation)

101 KAR 5:015. Furloughs.

RELATES TO: 2010 Extra. Sess. Ky. Acts ch. 1, Part IV, 11

STATUTORY AUTHORITY: 2010 Extra. Sess. Ky. Acts ch. 1, Part IV, 11(g)

NECESSITY, FUNCTION, AND CONFORMITY: 2010 Extra. Sess. Ky. Acts ch. 1, Part IV, 11(g) requires the Secretary of Personnel to promulgate an administrative regulation establishing procedures for the implementation of furloughs or a temporary reduction of hours of all Executive Branch employees due to a lack of funds as certified by the State Budget Director. This administrative regulation establishes the provisions and requirements for these furloughs.

Section 1. Definitions. (1) "Appointing Authority" means:

(a) An individual who meets the definition of KRS 18A.005(1) or 151B.010(1); or

(b) For employees governed by KRS Chapter 16, the Commissioner of the Department of Kentucky State Police.

(2) "Furlough" or "reduction in hours" means the temporary reduction of hours an employee is scheduled to work by the appointing authority within a pay period.

(3) "Lack of funds" means a current or projected deficiency of funding to maintain current or projected levels of staffing and operations of state government in a fiscal year.

(4) "Secretary" means the Secretary of the Personnel Cabinet as provided for in KRS 18A.115.

Section 2. General Provisions. (1) Based upon the lack of funds certified by the State Budget Director, and the approval of the Governor, the requirements established in this administrative regulation shall govern the furlough of all state Executive Branch employees.

(2) A furlough plan shall be developed by each executive branch Cabinet or independent agency in conformity with these requirements, and upon approval by the Secretary, shall be implemented at the Cabinet or independent agency level by an appointing authority.

(3) Furlough plans shall include the following provisions:

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(a) All state Executive Branch employees, classified and unclassified, shall be furloughed for a total of six (6) working days over the course of the 2010-2011 fiscal year.

(b) An employee shall not be furloughed more than twenty-four (24) work hours in a six (6) month calendar period, as provided in this paragraph.

1. An employee regularly assigned to a forty (40) hour work schedule shall not be furloughed more than three (3) work days or twenty-four (24) work hours.

2. An employee regularly assigned to a 37.5-hour work schedule shall not be furloughed more than three (3) work days or twenty-two and one-half (22.5) work hours, which is the equivalent reduction of hours and corresponding pay.

3. Any other employee on a different work schedule shall be furloughed in a manner to achieve an equivalent reduction of hours and corresponding pay. These provisions shall be set forth in the furlough plan provided by the Cabinet Secretary or independent agency head and approved by the Secretary of Personnel.

(4) Unclassified employees appointed pursuant to KRS 18A.115(1)(d), (e), (f), (g), (h), or (i) may be furloughed additional work hours at the discretion of the appointing authority.

(5) A furloughed employee whose hours of work are temporarily reduced:

(a) Shall remain eligible for state-paid benefits during the temporary reduction of hours;

(b) Shall be notified in writing by the appointing authority at least seven (7) calendar days prior to the date of furlough, except that an employee may voluntarily agree in writing to waive the seven (7) day notice requirement;

(c) Shall not be furloughed more than twenty (20) percent of an employee's scheduled work hours in any one work week, except as provided in subsection (6) of this section;

(d) Shall not be eligible to utilize accrued leave balances in lieu of temporary reduction of hours without pay; and

(e) Shall not be entitled to appeal the reduction of work hours to the Personnel Board, the Kentucky Technical Education Personnel Board, the Department of Kentucky State Police Personnel Board, or the applicable administrative body.

(6) In addition to the mandatory furlough hours, any employee may volunteer, with the prior approval of the appointing authority, to take leave without pay and retain accrued leave balances. An employee shall submit the Voluntary Furlough Request Form to the Secretary of Personnel before the effective date of a voluntary furlough.

(7) A contract worker shall not perform services pursuant to the contract when the assigned state office building is closed due to furlough. The work schedules of all contract workers shall be reduced in the same manner as state employees during other periods of furlough.

Section 3. Furlough Dates. (1) The six (6) furlough days shall be scheduled as follows:

(a) In order to maximize operational costs, state government shall "shut down" and close on three (3) of the furlough days:

1. September 3, 2010;
2. November 12, 2010; and
3. May 27, 2011.

(b)1. The remaining three (3) furlough days shall be applied in the following months:

- a. October 2010;
- b. March 2011; and
- c. April 2011.

2. Each Cabinet Secretary, independent agency head, or designated appointing authority shall furlough each employee not exempted in subsection (2) of this section the equivalent of one (1) day during each of the months listed in subparagraph 1. of this paragraph.

(2) The individuals employed in the following specific job classifications may be exempted from any or all provisions of the furlough requirements, as approved by the Secretary of the Personnel Cabinet, upon request and certification by the Secretary of the Justice and Public Safety Cabinet, the Secretary of the Cabinet for Health and Family Services, or the Commissioner of State Police:

(a) Job classifications directly responsible for the care or safety

of inmates or residents in twenty-four (24) hour correctional or juvenile justice facilities;

(b) Job classifications directly responsible for the care or safety of residents in twenty-four (24) hour mental health facilities; and

(c) Job classifications of uniformed law enforcement officers or trainees that are required to protect the lives and safety of the citizens of the Commonwealth.

(3) In conjunction with the appointing authority, the Secretary shall provide maximum flexibility to the facilities with twenty-four (24) hour, seven (7) day-a-week operations to ensure that the employees within these facilities are appropriately furloughed while any disruption of services is minimized.

(4) Each Cabinet Secretary and independent agency head, in conjunction with the Secretary, shall consider the impact of these furlough requirements on the specific public services the individual Cabinet or independent agency provides and the impact of the scheduled furloughs on the workforce within the individual Cabinet or independent agency. This information shall be provided to the Secretary within the furlough plan.

(5) Each Cabinet or independent agency, once approved by the Secretary, may designate additional appointing authorities to effectuate the furlough of its employees.

(6) If there is an emergency or natural disaster, as certified by the Governor, the Secretary may alter, amend, revoke, suspend, or otherwise set aside any of the furlough requirements as necessary.

Section 4. Incorporation by Reference. (1) The Voluntary Furlough Request Form, July 2010, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

NIKKI R. JACKSON, Secretary

APPROVED BY AGENCY: August 13, 2010

FILED WITH LRC: August 13, 2010 at 11:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, September 22, 2010 at 10 a.m. at 501 High Street, 3rd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing within five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 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: Dinah T. Bevington, Office of Legal Services, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dinah T. Bevington

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the requirements for implementing furlough plans for all state Executive Branch employees.

(b) The necessity of this administrative regulation: 2010 Extra. Sess. Ky. Acts ch. 1, Part IV, 11(g) established that the Secretary of Personnel must promulgate an administrative regulation prior to the furlough of any employee. The regulation is necessary to implement the authorized furloughs, establish the criteria which must be included, and also notify employees of the consistent guidelines which will apply to all employees when the furloughs are implemented.

(c) How this administrative regulation conforms to the content of the authorizing statutes: 2010 Extra. Sess. Ky. Acts ch. 1, Part

IV, 11(g) requires the Personnel Secretary to promulgate this regulation prior to exercising the authority with which the Personnel Cabinet, the Governor, and the Office of the State Budget Director were expressly granted. Further, KRS 18A.030 allows the secretary to promulgate comprehensive administrative regulations consistent with the provisions of KRS Chapters 13A and 18A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in the effective administration of the requirements of those set forth in 2010 Extra. Sess. Ky. Acts ch. 1, Part IV, 11(g), as it establishes when the furlough will be implemented and the additional guarantees that all employees will receive.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation impacts all state Executive Branch Cabinets and independent agencies.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each entity will have to review how these furlough requirements will impact their workforce and the services the cabinet or agency provides to the Commonwealth of Kentucky. This will involve the determination of whether any staff should be exempted from any specific furlough requirement, per the limitations set forth in the regulation. Each entity will then be responsible for implementation of the furloughs, as well as the oversight and tracking of the unpaid leave of its employees. Proper notice to each employee is required, which is handled at the cabinet/agency level, as well as the handling of additional questions or issues which may arise.

(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 additional costs anticipated to each of the entities identified.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The decision to implement furloughs was necessary to achieve the savings required by the budget passed by the General Assembly. In the first fiscal year alone, over \$24 million dollars in savings will be recognized.

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

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This regulation, as amended, is not anticipated to generate any new or additional fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? Tiering does not apply because all classes are treated the same under this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. HB 1 of the 2010 Kentucky General Assembly Extraordinary Session and KRS 18A.030.

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

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

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

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

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

PUBLIC PROTECTION CABINET Department of Insurance Health and Life Division (New Administrative Regulation)

806 KAR 15:090. Notice of rights as an owner of a life insurance policy.

Relates To: KRS 304.14-120, 304.15-075

Statutory Authority: KRS 304.2-110, 304.15-075(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.15-075 requires the commissioner to develop a notice to inform the owner of a policy of life insurance issued in this state of his or her rights as an owner of a life insurance policy. KRS 304.15-075 also allows the commissioner to promulgate administrative regulations to establish that the notice be made only with respect to policies with a net death benefit that is \$100,000 or greater. This administrative regulation establishes the notice that must be provided to owners of life insurance policies at times specified in KRS 304.15-075(3) and exempts insurers from providing notice to owners whose life insurance policy has a net death benefit that is less than \$100,000.

Section 1. (1) Except as provided in Section 2 of this administrative regulation, an insurer shall provide the following notice to the owner of an individual life insurance policy at the times specified in KRS 304.15-075(3):

(a) Important Information About Your Life Insurance Policy, Notice 126, 8/2010; or

(b) A notice developed by the insurer which shall:

1. Meet the requirements of KRS 304.15-075(2); and

2. Be filed with and approved by the commissioner in accordance with KRS 304.14-120 and 806 KAR 14:005.

(2) An insurer may include specific contact information in the notice required pursuant to subsection (1)(a) of this section.

Section 2. An insurer shall not be required to provide the notice set forth in Section 1 of this administrative regulation if the net death benefit of the owner's life insurance policy, per policy, is less

than \$100,000.

Section 3. Incorporation by Reference. (1) "Important Information About Your Life Insurance Policy", Notice 126, 8/2010, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the department Web site at <http://insurance.ky.gov>.

SHARON P. CLARK, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: August 13, 2010

FILED WITH LRC: August 13, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2010, at 9 a.m., (ET) at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 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 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 September 30, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: DJ Wasson, Staff Assistant, Kentucky Department of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the notice that must be provided to owners of life insurance policies at specified times and exempts insurers from providing notice to owners whose life insurance policy has a net death benefit that is less than \$100,000.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to promulgate the notice required to be sent by insurers to owners of life insurance policies prior to surrendering or lapsing a policy or accelerating a death benefit. Further, this administrative regulation is necessary to allow for an exemption for owners of life insurance policies with net death benefits of less than \$100,000.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner of the Department of Insurance to make reasonable rules and regulations necessary for the effectuation of any provision of the Kentucky Insurance Code. KRS 304.15-075 requires the commissioner to develop a notice to inform the owner of a policy of life insurance issued in this state of his or her rights as an owner of a life insurance policy. KRS 304.15-075 also allows the commissioner to promulgate administrative regulations to establish that the notice be made only with respect to policies with a net death benefit that is \$100,000 or greater. This administrative regulation establishes the notice that must be provided to owners of life insurance policies at specified times and exempts insurers from providing notice to owners whose life insurance policy has a net death benefit that is less than \$100,000.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide insurers with the notice they are statutorily required to send to owners of life insurance policies. Additionally, this administrative regulation will set forth an exemption to the notice requirement, as permitted by statute.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation could impact the approximately 473 insurers authorized to write life insurance in Kentucky.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Life insurers will be required to provide the notice promulgated by this administrative regulation to all owners of nonexempt life insurance policies issued by them at specific times identified in statute.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Department of Insurance requested that affected entities provide an estimate of the costs to implement this administrative regulation. The affected entities reported that the upfront cost associated with compliance and implementation of this regulation would be \$20,000 to \$150,000. The range is dependent upon a number of factors including, but not limited to, the types of products sold, the systems and programming capability and capacity, and the implementation of the necessary procedure and control functions to comply with basic accounting and auditing rules. There will also be basic ongoing administrative costs associated with compliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Providing the notice required by this administrative regulation will result in compliance with KRS 304.15-075.

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

(a) Initially: There will be no cost to implement this regulation.

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

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: If any costs arise, the budget of the Kentucky Department of Insurance will be used for implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all life insurers.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance as the implementer of the regulation.

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

regulation. KRS 304.2-110 and 304.15-075.

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 should be essentially revenue neutral.

(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 should be essentially revenue neutral.

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

(c) How much will it cost to administer this program for the first year? This regulation should be essentially revenue neutral.

(d) How much will it cost to administer this program for subsequent years? This regulation should remain essentially revenue neutral.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET
Department of Financial Institutions
Non-Depository Division of Financial Institutions
(New Administrative Regulation)

808 KAR 12:021. Licensing and registration.

RELATES TO: KRS 286.8-010, 286.8-030(1), 286.8-032, 286.8-034, 286.8-060, 286.8-080, 286.8-100, 286.8-140(4), 286.8-255, 286.8-260, 286.8-285, 286.295

STATUTORY AUTHORITY: KRS 286.8-140(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.8-140(1) authorizes the commissioner to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 286.8. KRS 286.8-030(1)(a) states that it is unlawful for any person to transact business in Kentucky as a mortgage loan company or mortgage loan broker if that person is not licensed with the Department of Financial Institutions or otherwise entitled to an exemption from licensure. KRS 286.8-100 states that no licensee shall establish or maintain a branch transacting business in Kentucky without filing an application and receiving prior written approval from the commissioner. KRS 286.8-255(1) requires mortgage loan originators and mortgage loan processors to register with the Department of Financial Institutions in order to originate mortgage loans in Kentucky. KRS 286.8-140(4) states that the commissioner has discretion to require filings and fees relating to licensure and registration to be submitted electronically with the Nationwide Mortgage Licensing System. This administrative regulation establishes procedures for licensure, registration, and electronic submission of filings and fees with the Nationwide Mortgage Licensing System.

Section 1. Licensure as a Mortgage Loan Company or Mortgage Loan Broker. (1) A person applying for licensure as a mortgage loan company or mortgage loan broker shall submit the following:

(a) A completed Form MU1, Uniform Mortgage Lender/Mortgage Broker Form;

(b) A completed Form MU2, Uniform Mortgage Biographical Statement & Consent Form for each control person designated on the direct owners and executive officers section of the Form MU1;

(c) A reviewed or audited financial statement prepared by a Certified Public Accountant in accordance with Generally Accepted Accounting Principles dated the previous year end to the date of submission of the Form MU1. A financial statement shall include a balance sheet, income statement, statement of cash flows, and all relevant notes thereto. If applicant is a start-up company, an initial

Statement of Condition and a pro-forma income statement shall be submitted in lieu of the financial statement;

(d) An original bond furnished by a surety company authorized to conduct business in Kentucky. The name of the principal insured on the bond must match exactly the full legal name of applicant. The bond shall be submitted on the following form in an amount not less than the amount required by KRS 286.8-060(1):

1. For a mortgage loan company, Surety Bond for Mortgage Loan Company Form; or

2. For a mortgage loan broker, Surety Bond for Mortgage Loan Broker Form;

(e) A certified copy of the following:

1. If a corporation, the Corporate Charter or Articles of Incorporation and Bylaws;

2. If a limited liability company, the Articles of Organization and Operating Agreement; or

3. If a partnership of any form, the Partnership Agreement;

(f) A Certificate of Authority or a Certificate of Good Standing issued by the Kentucky Secretary of State dated not more than sixty (60) days prior to the submission of the Form MU-1;

(g) If applicant will be operating in Kentucky under a name other than its legal name, a file-stamped copy of the Certificate of Assumed Business Name issued by the Kentucky Secretary of State;

(h) If required to do so by KRS 286.8-032(6), documentation that a managing principal designated by applicant has successfully completed the educational training set forth in KRS 286.8-032(6);

(i) A completed State License Confirmation Form for each state where applicant is licensed or otherwise authorized to conduct business as a mortgage loan company or mortgage loan broker or has been licensed or otherwise authorized to conduct business as a mortgage loan company or mortgage loan broker in the last five (5) years;

(j) If the principal office will be located in a residence, a completed Disclosure of Location at a Residence Form; and

(k) The fees set forth in KRS 286.8-034(1).

(2) A person applying for renewal of a mortgage loan company or mortgage loan broker license pursuant to KRS 286.8-034(3) and prior to December 1 shall complete the following:

(a) The required attestation that all information is correct as available online at <http://mortgage.nationwidelicencingsystem.org>;

(b) A completed Annual Report of Activity Form, updated 07/2010; and

(c) The fee set forth in KRS 286.8-034(3).

(3) A person applying for renewal of a mortgage loan company or mortgage loan broker license through reinstatement pursuant to KRS 286.8-034(4) shall complete the following:

(a) The required attestation that all information is correct as available online at <http://mortgage.nationwidelicencingsystem.org>;

(b) A completed Annual Report of Activity Form, updated 08/2010; and

(c) The fees set forth in KRS 286.8-034(3) and 286.8-034(4).

Section 2. Registration of a Branch. (1) No branch shall be approved unless it is controlled, managed, and supervised by the applicant's principal office.

(2) A person applying for registration of a branch shall submit the following:

(a) A completed Form MU3, Uniform Mortgage Branch Office Form;

(b) A copy of the lease or deed for the branch;

(c) A completed Branch Authorization Form, updated 08/2010;

(d) If the branch will be located in a residence, a Disclosure of Location at a Residence Form, updated 08/2010; and

(e) The fee set forth in KRS 286.8-034(1)(b).

(3) A person applying for renewal of a branch registration pursuant to KRS 286.8-034(3) and prior to December 1 shall submit the following:

(a) The required attestation that all information is correct as available online at <http://mortgage.nationwidelicencingsystem.org>;

(b) A completed Annual Report of Activity Form, updated 08/2010; and

(c) The fee set forth in KRS 286.8-034(3).

(4) A person applying for renewal of a branch registration

through reinstatement pursuant to KRS 286.8-034(4) shall submit the following:

- (a) The required attestation that all information is correct as available online at <http://mortgage.nationwidelicensingsystem.org>;
- (b) A completed Annual Report of Activity Form, updated 08/2010; and
- (c) The fees set forth in KRS 286.8-034(3) and (4).

Section 3. Registration of a mortgage loan originator or mortgage loan processor. (1) A person applying for registration as a mortgage loan originator or mortgage loan processor shall submit the following:

- (a) A completed Form MU4 - Uniform Individual Mortgage License/Registration & Consent Form;
- (b) Submit to and bear the cost of a Federal Bureau of Investigations background records check as part of an application for registration as a mortgage loan originator or mortgage loan processor pursuant to KRS 286.8-255(2);
- (c) Certification that applicant has successfully completed all education and testing required by KRS 286.8-255; and
- (d) The fee set forth in KRS 286.8-255(2)(b).

(3) A person applying for renewal of a mortgage loan originator or mortgage loan processor registration pursuant to KRS 286.8-255(4) shall submit the following:

- (a) A completed Uniform Individual Mortgage License/Registration Renewal Form available online at <http://mortgage.nationwidelicensingsystem.org>;
- (b) Submit to and bear the cost of a Federal Bureau of Investigations background records check as part of a renewal or reinstatement application for registration as a mortgage loan originator or mortgage loan processor pursuant to KRS 286.8-255(4) or 286.8-255(5) if the applicant's Federal Bureau of Investigations background records check currently on file with the Kentucky Department of Financial Institutions is more than three (3) years old;
- (c) Certification that applicant has successfully completed all education and testing required by KRS 286.8-255 and 286.8-260; and
- (d) The fee set forth in KRS 286.8-255(4).

(4) A person applying for renewal of a mortgage loan originator or mortgage loan processor registration through reinstatement pursuant to KRS 286.8-255(5) shall submit the following:

- (a) The required attestation that all information is correct as available online at <http://mortgage.nationwidelicensingsystem.org>;
- (b) Certification that applicant has successfully completed all education and testing required by KRS 286.8-255 and 286.8-260;
- (c) Submit to and bear the cost of a Federal Bureau of Investigations background records check as part of a renewal or reinstatement application for registration as a mortgage loan originator or mortgage loan processor pursuant to KRS 286.8-255(4) or 286.8-255(5) if the applicant's Federal Bureau of Investigations background records check currently on file with the Kentucky Department of Financial Institutions is more than three (3) years old; and
- (d) The fees set forth in KRS 286.8-255(4) and 286.8-255(5).

Section 4. In addition to the requirements set forth herein, an applicant applying for registration, renewal or reinstatement as a mortgage loan originator must provide proof that the mortgage loan originator holds or is covered by a bond furnished by a surety company authorized to conduct business in Kentucky. If the mortgage loan originator is procuring his or her own bond, the bond shall be submitted on the Surety Bond for Individual Mortgage Loan Originators Form referenced herein and in an amount determined by annual loan origination as follows:

- (a) If the annual loan volume of the applicant is less than ten million dollars the surety bond shall be in an amount not less than \$15,000; or
- (b) If the annual loan volume of the applicant is \$10 million dollars or more, the surety bond shall be in an amount not less than \$20,000.

Section 5. Financial Responsibility. An applicant seeking registration or renewal under KRS 286.8-255 must demonstrate the financial responsibility, character, and general fitness such as to

command the confidence of the community and to warrant a determination that the applicant will operate honestly, fairly, lawfully, and efficiently within the purposes of the subtitle. Every applicant must authorize the commissioner to obtain a credit report containing a Fair Isaac Corporation (FICO) score to aide in making this determination. If the applicant possesses a threshold FICO score of 600 or better, then the applicant will be deemed to have met this requirement. If the applicant possesses a FICO score of less than 600, the commissioner may review the applicant's credit report for the following information to make this determination:

- (a) Any outstanding judgments, excluding judgments arising solely from medical expenses for the applicant or an immediate family member;
- (b) Any outstanding tax liens or other governmental liens;
- (c) Any foreclosures occurring within five (5) years of the date of application or renewal;
- (d) Any bankruptcies occurring within five (5) years of the date of application or renewal; and
- (e) Any delinquent accounts occurring within five (5) years of the date of application or renewal.

Section 6. Electronic Submission of Filings and Fees through the Nationwide Mortgage Licensing System. (1) A person applying for licensure or registration pursuant to Sections 1, 2, 3, and 4 of this administrative regulation shall electronically submit the following with the State Regulatory Registry, LLC, at <http://www.stateregulatoryregistry.org/NMLS>, as part of the nationwide mortgage licensing system:

- (a) All forms required by Sections 1, 2, 3, and 4 of this administrative regulation, as applicable;
 - (b) Fingerprints and any other information necessary to obtain the background records checks referenced in this administrative regulation; and
 - (c) All fees referenced in this administrative regulation.
- (2) All forms, documentation, fees, or information that are not available for electronic submission directly through the Nationwide Mortgage Licensing System shall be submitted directly to the department.
- (3) Any fees assessed by the State Regulatory Registry, LLC, to process the electronic submissions set forth in subsection (1) of this section shall be borne by the applicant.

Section 7. Abandoned applications. If any applicant fails to provide or respond to a request for additional information within ninety (90) days of submission to the department, the application is deemed abandoned. Any applicant seeking licensing or registration after its application has been abandoned must reapply and resubmit any required information.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Form MU1 Uniform Mortgage Lender/Mortgage Broker Form";
- (b) "Form MU2 Uniform Mortgage Biographical Statement & Consent Form";
- (c) "Form MU3 Uniform Branch Office Form";
- (d) "Form MU4 Uniform Individual Mortgage License/Registration & Consent Form";
- (e) "Surety Bond for Mortgage Loan Company", updated 08/2010;
- (f) "Surety Bond for Mortgage Loan Broker", updated 08/2010;
- (g) "Surety Bond for Mortgage Loan Originators", updated 08/2010;
- (h) "State License Confirmation Form", updated 08/2010;
- (i) "Annual Report of Activity Form", updated 08/2010;
- (j) "Disclosure of Location at a Residence Form updated 08/2010"; and
- (k) "Branch Authorization Form", updated 08/2010;

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m. This material may also be obtained from the department's Web site at <http://www.kfi.ky.gov>.

VOLUME 37, NUMBER 3 – SEPTEMBER 1, 2010

ROBERT D. VANCE, Secretary
CHARLES A. VICE, Commissioner

APPROVED BY AGENCY: August 11, 2010

FILED WITH LRC: August 13, 2010 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2010 at 10 a.m., EDT, in the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 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 canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 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: Shaun T. Orme, Assistant General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390 ext. 282, fax (502) 573-2183.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shaun T. Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for licensure, registration, and electronic submission of filings and fees with the Nationwide Mortgage Licensing System.

(b) The necessity of this administrative regulation: This administrative regulation prescribes the requirements necessary to conform to recent legislation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 286.8-140(1) authorizes the commissioner to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 286.8.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the procedures for licensure, registration, and electronic submission of filings and fees with the Nationwide Mortgage Licensing 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: N/A

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects mortgage loan originators, mortgage loan processors, mortgage loan companies, mortgage loan brokers, and any branch thereof who engage in the mortgage lending process in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: The regulated entities will complete applicable forms and applications as well as pay any applicable fees or costs to maintain a surety bond.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Respective application and renewal fees as well as the

costs of maintaining a surety bond.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated entity will benefit from specific procedures and requirements to be eligible under both state and federal requirements.

(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: Fees generated cover the cost.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None

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

(9) TIERING: Is tiering applied? Yes, tiering is applied to mortgage loan originators in that the amount required for the respective surety bond is based upon the total annual loan volume of the individual mortgage loan originator.

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 Financial Institutions.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The statutory authority for this administrative regulation is found in KRS Chapter 286.8, 808 KAR Chapter 12 and the Housing and Economic Recovery Act of 2008, Title V, the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, 15 U.S.C. 5101, et seq. (the "S.A.F.E. Act").

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 fees did not increase or decrease with respect to any entity affected by this regulation and is consistent with past practice. Because the number of registrants and licensees is not static, it is impossible to predict precisely any effect on revenue. It is expected that revenue received will merely cover the cost of the program.

(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? Because the number of registrants and licensees is not static, it is impossible to predict precisely any effect on revenue. It is expected that revenue received will merely cover the cost of the program.

(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? Because the number of registrants and licensees is not static, it is impossible to predict precisely any effect on revenue. It is expected that revenue received will merely cover the cost of the program.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET
Department of Financial Institutions
Non-Depository Division of Financial Institutions
(New Administrative Regulation)

808 KAR 12:022. Examination and investigation fees.

RELATES TO: KRS 286.8-170; KRS 286.8-180

STATUTORY AUTHORITY: KRS 286.8-140(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.8-140(1) authorizes the commissioner to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 286.8. KRS 286.8-170(5) states that a mortgage loan company or mortgage loan broker shall pay a fee for each examination conducted by the department of Financial Institutions based on fair compensation for time and actual expense. KRS 286.8-180(3) states that a mortgage loan company or mortgage loan broker may be assessed the cost of any investigation or hearing conducted by the department. This administrative regulation establishes the fees for such examinations and investigations.

Section 1. The fee for each examination and investigation conducted by the department shall be forty-two (42) dollars per hour for each examiner conducting the examination or investigation, and shall include all reasonable expenses incurred by the department as a result of the examination or investigation.

Section 2. (1) A mortgage loan company or mortgage loan broker shall pay the fee established in Section 1 of this administrative regulation within thirty (30) days of the date of the fee bill sent following the examination or investigation.

(2) If the fee is not paid within the thirty (30) day time period, the department shall send the mortgage loan company or mortgage loan broker a notice of failure to pay the fee and a demand for immediate payment.

(3) If the mortgage loan company or mortgage loan broker does not pay the fee within thirty (30) days from the date of demand for immediate payment, the mortgage loan company or mortgage loan broker and its control persons shall:

- (a) Be subject to the penalties established in KRS 286.8-090 and 286.8-046;
- (b) Remain liable for the payment of all owed fees; and
- (c) Be subject to administrative action by the department and on its behalf.

ROBERT D. VANCE, Secretary
 CHARLES A. VICE, Commissioner

APPROVED BY AGENCY: August 11, 2010

FILED WITH LRC: August 13, 2010 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2010 at 10 a.m., EDT, in the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 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 canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 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: Shaun T. Orme, Assistant General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390 ext. 282, fax (502) 573-2183.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shaun T. Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the fees for examinations and investigations performed by the Department of Financial Institutions pursuant to its authority under KRS Chapter 286.8 and the consequences of nonpayment.

(b) The necessity of this administrative regulation: The regulation provides notice to licensees and registrants of the fee amounts and the consequences of nonpayment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 286.8-140(1) authorizes the executive director to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 286.8.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By advising of the fee amounts for the statutorily-required examinations and investigations and the consequences of nonpayment, there is no general fund expenditure because the efforts pay for themselves.

(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 regulation: N/A

(c) How the amendment conforms to the content of the authorizing statute: 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: Mortgage loan originators, mortgage loan processors, mortgage loan companies, mortgage loan brokers, and any branch thereof who engage in the mortgage lending process in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: The regulated entities will pay an hourly fee for any statutorily-required examination or investigation. The \$42 hourly fee has not increased.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The hourly fee of \$42 remains the same.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated entities will benefit from future compliance and such will advance public protection.

(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: Fees generated cover the cost.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Yes; this regulation formally establishes the hourly rate that the Department of Financial Institutions has been using pursuant to its statutory authority. It does not increase the fee that has been used by the Department of Financial Institutions for many years.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all entities regulated by it. The type of examination conducted does not appreciably vary depending on the size of the license; however, because charges are "per hour," entities with less activity will generally have a quicker examination and, thus, incur less examination expense.

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 Financial Institutions.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The statutory authority for this administrative regulation is found in KRS Chapter 286.8 and 808 KAR Chapter 12.

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 fees did not increase or decrease with respect to any entity affected by this regulation, but this administrative regulation formally establishes the hourly rate that the Department of Financial Institutions has been using pursuant to its statutory authority for many years.

(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? Because this examination fee has been previously charged to licensees, this administrative regulation will have no material effect on 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? Because this examination fee has been previously charged to licensees, this administrative regulation will have no material effect on revenue.

(c) How much will it cost to administer this program for the first year? There will be no cost to administer this program for the first year because the fees generated will cover the costs.

(d) How much will it cost to administer this program for subsequent years? There will also be no additional cost to administer this program in subsequent years because the fees generated will cover the costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET
Department of Financial Institutions
Non-Depository Division of Financial Institutions
(New Administrative Regulation)

808 KAR 12:023. Recordkeeping.

RELATES TO: KRS 286.8-160, 286.8-170

STATUTORY AUTHORITY: KRS 286.8-140(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.8-140(1) authorizes the commissioner to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 286.8. KRS 286.8-160(2) states that records governed by KRS Chapter 286.8 shall be preserved for such time as the commissioner may require, not to exceed five (5) years after a mortgage loan application is completed, whether approved or rejected, or on mortgage loans paid in full, whichever is longer. KRS 286.8-160(6) and (7) state that any person who ceases to operate as a mortgage loan company or mortgage loan broker in Kentucky shall, prior to the discontinuance of business, notify the commissioner of the physical location where the records are kept and shall designate a custodian of records. KRS 286.8-170(1) states that each branch office shall keep detailed records of all transactions occurring there and shall furnish full control records to the principal office. In addition, KRS 286.8-170(3) makes the affairs of every registrant or licensee subject to periodic, special or other examination

by the commissioner with or without notice to the registrant or licensee. This administrative regulation establishes the records that must be preserved and the time periods of preservation.

Section 1. Preservation of Records. Unless a longer period is required by federal law, records shall be maintained by a mortgage loan broker or mortgage loan company in accordance with the Records Retention Schedule.

Section 2. Notification Procedure. At least ten (10) days prior to the cessation of business, a mortgage loan company or mortgage loan broker shall submit a completed Notification of Cessation of Business, Location of Physical Records, and Designation of Records Custodian Form.

Section 3. Branch Offices. A branch office shall:

(1) Keep the detailed records of all transactions conducted in the mortgage lending process and which are performed by the branch office employees, in either electronic or written format; and

(2) Make such detailed records available immediately upon the request of an examiner authorized by the commissioner to conduct such examination.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Records Retention Schedule", updated 08/2010; and

(b) "Notification of Cessation of Business, Location of Physical Records, and Designation of Records Custodian Form", updated 08/2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m. or at <http://www.kfi.ky.gov>.

ROBERT D. VANCE, Secretary

CHARLES A. VICE, Commissioner

APPROVED BY AGENCY: August 11, 2010

FILED WITH LRC: August 13, 2010 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2010 at 10 a.m., EDT, in the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 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 canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 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: Shaun T. Orme, Assistant General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390 ext. 282, fax (502) 573-2183.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shaun T. Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the records that must be preserved and the time periods of preservation for mortgage loan brokers, mortgage loan companies, and any branch thereof.

(b) The necessity of this administrative regulation: The regulation provides notice to licensees and registrants of the records that must be preserved and the time periods of preservation.

(c) How this administrative regulation conforms to the content

of the authorizing statutes: KRS 286.8-140(1) authorizes the executive director to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 286.8.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures the maintenance and integrity of records subject to statutorily permitted inspection.

(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 regulation: N/A

(c) How the amendment conforms to the content of the authorizing statute: 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: Mortgage loan companies, mortgage loan brokers, and any branch thereof.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: The regulated entities will keep records in a manner and for the duration articulated in this administrative regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated entities will benefit from future compliance and such will advance public protection. Moreover, maintenance of records should result in decreased examination time, and thus, less expense to the licensee.

(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: 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: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) TIERING: Is tiering applied? Tiering is not applicable. The records necessary to conduct a proper examination are the same regardless of the entity type.

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 Financial Institutions.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The statutory authority for this administrative regulation is found in KRS Chapter 286.8 and 808 KAR Chapter 12.

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? This admin-

istrative regulation will have no impact on expenditures or revenues.

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET Department of Financial Institutions Non-Depository Division of Financial Institutions (New Administrative Regulation)

808 KAR 12:024. Change of Address, Name, Control, or Agent for Service of Process.

RELATES TO: KRS 286.8-032(8)(b), (9), 286.8-036, 286.8-060, 286.8-075

STATUTORY AUTHORITY: KRS 286.8-140(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.8-140(1) authorizes the commissioner to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 286.8. KRS 286.8-032(8)(b), 286.8-036, and 286.8-060 state that a licensee shall notify the department of a change of address or name and shall update its license and surety bond upon such change. KRS 286.8-032(9) states that a licensee shall notify the department of a change in the status of an agent for service of process. KRS 286.8-075 states that a licensee shall receive approval from the commissioner before executing a change of control. This administrative regulation establishes the procedure for notifying the department of and receiving approval for such changes.

Section 1. Change of Address, Name, Control, or Agent for Service of Process. (1) A licensee changing its address, name, or agent for service of process shall notify the commissioner:

(a) At least ten (10) days prior to the change of address or name; and

(b) Five (5) days prior to the change of agent for service of process.

(2) A licensee that wants to engage in a transaction resulting in a change of control shall notify the commissioner at least thirty (30) days in advance with such information as necessary for the commissioner to determine whether the requirements of KRS Chapter 286.6 will be satisfied upon the change of control. The commissioner shall notify the licensee whether the request is approved or denied within thirty (30) days.

(3) A licensee changing its address, name, control, or agent for service of process shall update this information in Nationwide Mortgage Licensing System (NMLS) within the same time periods set forth in subsections (2) and (3) of this section.

ROBERT D. VANCE, Secretary

CHARLES A. VICE, Commissioner

APPROVED BY AGENCY: August 11, 2010

FILED WITH LRC: August 13, 2010 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2010 at 10 a.m., EDT, in the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hear-

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ing shall notify this agency in writing by September 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 canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 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: Shaun T. Orme, Assistant General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390 ext. 282, fax (502) 573-2183.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shaun T. Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for notifying and receiving approval from the Department of Financial Institutions for changes in address, name, control, or agent for service of process.

(b) The necessity of this administrative regulation: The regulation prescribes the notification and approval procedures to ensure that the Department of Financial Institutions is on notice of such changes to assist in its regulatory duties.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 286.8-140(1) authorizes the executive director to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 286.8 and the statute requires that the Department of Financial Institutions be notified in the event of the circumstances described in this administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Sets forth the procedures for notifying and receiving approval from the Department of Financial Institutions for changes in address, name, control, or agent for service of process so that both the Department of Financial Institutions and the public consumer will have this information.

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

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

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

(c) How the amendment conforms to the content of the authorizing statute: 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: Mortgage loan originators, mortgage loan processors, mortgage loan companies, mortgage loan brokers, and any branch thereof who engage in the mortgage lending process in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: The regulated entity will advise the Department of Financial Institutions of any changes in the information as required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated entity will be in compliance with applicable statutes and regulations and this up-to-

date information will result in less examination time and therefore lower costs to the regulated entity.

(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: 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: None

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

(9) TIERING: Is tiering applied? Tiering is not applicable. All regulated entities and persons must provide the Department of Financial Institutions with up-to-date information to ensure proper regulatory oversight.

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 Financial Institutions.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The statutory authority for this administrative regulation is found in KRS Chapter 286.8 and 808 KAR Chapter 12.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will have no impact on 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? This administrative regulation will not generate revenue for the first year.

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET Department of Financial Institutions Non-Depository Division of Financial Institutions (New Administrative Regulation)

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

RELATES TO: KRS 286.8-150, 286.8-225, 286.8-227

STATUTORY AUTHORITY: KRS 286.8-140(1), 286.8-227

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.8-140(1) authorizes the commissioner to promulgate administrative regulations necessary to accomplish the basic purposes of KRS

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Chapter 286.8. KRS 286.8-227 provides that the commissioner is responsible for the distribution of funds in the Mortgage Fraud Prosecution Fund and shall, in consultation with the Attorney General and local prosecutors develop administrative regulations for the use of these funds. This administrative regulation establishes the procedures for distributing and using funds from the Mortgage Fraud Prosecution Fund.

Section 1. Definitions. As used in this administrative regulation unless the context clearly requires otherwise:

- (1) "Commissioner" means the commissioner of the department.
- (2) "Department" means the Department of Financial Institutions. (3) "Mortgage Fraud Prosecution Fund" or "Fund" means the account established under KRS 286.8-225 and 286.8-227.
- (4) "Prosecutorial agency" means:
 - (a) The office of the Kentucky Attorney General;
 - (b) The office of the United States Attorney;
 - (c) The office of any county or commonwealth attorney in the Commonwealth of Kentucky; or
 - (d) Any other state or federal regulatory agency.

Section 2. Authorization for Use of Funds. The commissioner is authorized to disburse funds held in the mortgage fraud prosecution fund to cover the expenses of the department or any prosecutorial agency for the purposes of prosecuting or aiding the prosecution of fraudulent activities in the mortgage lending process, whether the prosecution arises from an investigation initiated or conducted by the department or from the independent investigation of any law enforcement agency. In addition, the funds may be used to cover the expenses for training related to the prevention, detection, or investigation of mortgage-related fraud, and consumer education related to mortgage fraud. Such prosecution and other authorized expenses may relate to the following:

- (a) Training;
- (b) Investigation;
- (c) Trial preparation and trial, including discovery;
- (d) Witness expenses;
- (e) Travel expenses;
- (f) Sentencing;
- (g) Appeal; or
- (h) Consumer education initiatives.

Section 3. Application and Approval for Disbursement of Funds. (1) The department may utilize any of the following for application, approval, and disbursement of funds to prosecutorial agencies:

(a) A written agreement or memorandum of understanding with a prosecutorial agency covering actual expenses for a set period of time or the actual expenses for a particular prosecution, investigation, training, or initiative. Each agreement or memorandum of understanding shall be signed by the commissioner and an authorized representative of the prosecutorial agency and shall identify: (1) the effective period; (2) the expenses to be covered; (3) the dollar limit, if any; and (4) the manner and form of billing expenses and the process for disbursement of funds;

(b) A written application submitted to the department for payment of prosecution-related or other authorized expenses shall include the following information:

1. The prosecutorial agency applicant name, address, and contact information;
2. A detailed description and estimated amount of the expenses sought to be covered, or if expenses have already been incurred, proof of incurrence of such expenses;
3. A detailed description of the cases, persons, and crimes being considered for prosecution, if applicable; and
4. A detailed description of the expenses, training, or initiative being proposed or sought for reimbursement.

(c) For funds sought to be utilized by the department for the purposes set forth in Section 2 of this administrative regulation, the commissioner shall maintain an accounting and memorandum of all such expenditures which shall include the information required under paragraph (b) of this subsection.

- (2) The commissioner shall approve or deny the application for

funds in writing. The approval shall contain the terms of disbursement including the maximum amount to be reimbursed, the billing process to be implemented, and reporting requirements for the disbursement of funds.

(3) A completed invoice or voucher in a form acceptable to the commissioner shall be submitted for all prosecution expenses for which payment or reimbursement from the account is sought.

Section 4. Funding Criteria. Allocation of funds by the commissioner to prosecutorial agencies shall be based on funds available in the mortgage fraud prosecution fund and the following:

- (1) The likelihood that any investigation or inquiry will lead to criminal prosecution;
- (2) Whether criminal prosecution is imminent; or
- (3) A demonstration of need for funds to accomplish the purposes set forth in Section 2 of this administrative regulation.

Section 5. Disbursement Limitation. (1) The commissioner is not required to disburse any funds unless the mortgage lending fraud prosecution account contains sufficient funds to cover the agreed disbursements.

(2) At no time shall the commissioner or the department be required to make disbursements from the department's own operating funds.

Section 6. Confidentiality of Information Provided in Funding Applications. The commissioner shall deem confidential and withhold from public inspection for such time as he considers necessary all information provided by prosecutorial agencies that:

- (1) Is furnished to the department on the express condition that the information remain confidential; or
- (2) That the commissioner deems necessary to protect the public welfare by avoiding the premature or unwarranted disclosure of information concerning any criminal investigation, prosecution, or litigation.

ROBERT D. VANCE, Secretary

CHARLES A. VICE, Commissioner

APPROVED BY AGENCY: August 11, 2010

FILED WITH LRC: August 13, 2010 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2010 at 10 a.m., EDT, in the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 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 canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 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: Shaun T. Orme, Assistant General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390 ext. 282, fax (502) 573-2183.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shaun T. Orme

- (1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for distributing and using funds from the Mortgage Fraud Prosecution Fund.

(b) The necessity of this administrative regulation: KRS 286.8-225, the statute creating the Mortgage Fraud Prosecution Fund, directed the Department of Financial Institutions to establish procedures for distributing and using the funds.

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(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 286.8-140(1) authorizes the executive director to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 286.8 and 286.8-225 specifically requires regulations for the use of these funds.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures that the funds from the Mortgage Fraud Prosecution Fund are used to detect, prevent, and prosecute fraud in the mortgage lending process in Kentucky.

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

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

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

(c) How the amendment conforms to the content of the authorizing statute: 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: Mortgage loan originators, mortgage loan processors, mortgage loan companies, mortgage loan brokers, and any branch thereof who engage in the mortgage lending process in Kentucky. In addition, all prosecutorial agencies as defined in KRS Chapter 286.8 and 808 KAR Chapter 12.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: The entities will comply with established procedures to receive approval of the Department of Financial Institutions for use of these funds.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None other than clerical time in requesting funds and documenting expenses.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance will allow the entities to aid in the detection, prevention, and prosecution of fraud in the mortgage lending process in Kentucky.

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

(a) Initially: Fines and contributions will fund the implementation of this administrative regulation.

(b) On a continuing basis: Fines and contributions will fund the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fines and contributions generated by the Department of Financial Institutions.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None

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

(9) TIERING: Is tiering applied? Tiering is not applicable. All entities requesting disbursement of funds from the Mortgage Fraud Prosecution Account should use the same process.

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 Financial Institutions, the office of the Kentucky Attorney General, the office of any county or commonwealth attorney in Kentucky, and applicable state regulatory agencies.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The statutory authority for this administrative regulation is found in KRS Chapter 286.8 and 808 KAR Chapter 12.

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 impact of this administrative regulation on expenditures or revenues is uncertain at this time because it is impossible to predict the occurrence of fraud and the subsequent need for these funds. Note: The administrative regulation itself does not generate revenue. It merely describes the procedures by which appropriate agencies may use the funds in the account. To the extent funds are disbursed to a prosecutorial agency, that agency will derive "revenue" and the Department of Financial Institutions would have a corresponding "cost." There will be no net fiscal impact on state and local government.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None. The administrative regulation itself does not generate revenue. It merely describes the procedures by which appropriate agencies may use the funds in the account.

(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. The administrative regulation itself does not generate revenue. It merely describes the procedures by which appropriate agencies may use the funds in the account.

(c) How much will it cost to administer this program for the first year? There will be no cost to administer this regulation the first year. Fines imposed by the department will be used as the source of funding. No additional agency funds will be used.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer this regulation in subsequent years. Fines imposed by the Department will be used as the source of funding. No additional agency funds will be used.

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 Financial Institutions Non-Depository Division of Financial Institutions (Repealer)

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

RELATES TO: KRS 286.8-020(2)(e)

STATUTORY AUTHORITY: KRS 286.8-140(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.8-140(1) authorizes the commissioner to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 286.8. KRS 286.8-020(2)(e) sets forth certain disclosure requirements for persons making less than five (5) loans per year; however, KRS 286.8-020(2)(e) was repealed by 2008 Ky. Acts Ch. 175. This administrative regulation, therefore, is no longer necessary.

Section 1. 808 KAR 12:065, Disclosure for lender/broker making less than five (5) loans per year, is hereby repealed.

ROBERT D. VANCE, Secretary

CHARLES A. VICE, Commissioner

APPROVED BY AGENCY: August 11, 2010

FILED WITH LRC: August 13, 2010 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2010 at 10 a.m., EDT, in the Department of Finan-

cial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 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 canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 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: Shaun T. Orme, Assistant General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390 ext. 282, fax (502) 573-2183.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shaun T. Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 808 KAR 12:065.

(b) The necessity of this administrative regulation: To repeal an unnecessary regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 286.8-140(1) authorizes the executive director to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 286.8 and the statute authorizing the prior regulation was repealed.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Repeals a regulation that is no longer necessary.

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

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

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

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

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

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

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): N/A

(5) Provide an estimate of how much it will cost 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: 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: None

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

(9) TIERING: Is tiering applied? Tiering was not used because the former statute applied equally to all persons.

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 Financial Institutions.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 2008 Ky. Acts Ch. 175

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET Department of Financial Institutions Non-Depository Division of Financial Institutions (Repealer)

808 KAR 12:076. Repeal of 808 KAR 12:075.

RELATES TO: KRS 286.8-032(8)

STATUTORY AUTHORITY: KRS 286.8-140(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.8-140(1) authorizes the commissioner to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 286.8. KRS 286.8-032(8) relates to mortgage loan broker license applications and license application renewals; requires information on the location of the physical office; and if the office is a residence, requires proof that the mortgage loan broker owns or leases the residence and lives in the residence as the broker's main residence. This administrative regulation establishing requirements of ownership if the office is a residence is no longer advised in light of pervasive industry practice and may unfairly burden registrants in light of the fact that exempt entities are not subject to such a requirement.

Section 1. 808 KAR 12:075, Requirements of mortgage broker residence office, is hereby repealed.

ROBERT D. VANCE, Secretary

CHARLES A. VICE, Commissioner

APPROVED BY AGENCY: August 11, 2010

FILED WITH LRC: August 13, 2010 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2010 at 10 a.m., EDT, in the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 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 canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to

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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 September 30, 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: Shaun T. Orme, Assistant General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390 ext. 282, fax (502) 573-2183.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shaun T. Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 808 KAR 12:075.

(b) The necessity of this administrative regulation: To repeal an unnecessary regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 286.8-140(1) authorizes the executive director to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 286.8.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Repeals a regulation that is no longer necessary.

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

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

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

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

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

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

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): N/A

(5) Provide an estimate of how much it will cost 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: 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: None

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

(9) TIERING: Is tiering applied? Tiering was not used because the former statute applied equally to all persons.

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 Financial Institutions.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: N/A

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET Department of Financial Institutions Non-Depository Division of Financial Institutions (Repealer)

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

RELATES TO: KRS 286.8-090, 286.8-255, 286.8-265

STATUTORY AUTHORITY: KRS 286.8-140(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.8-140(1) authorizes the commissioner to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 286.8. KRS 286.8-255(1) requires all mortgage loan originators and mortgage loan processors to register with the Department of Financial Institutions in order to originate mortgage loans in Kentucky. This administrative regulation, establishing procedures for registration of mortgage loan officers and mortgage brokers, is no longer necessary as these procedures have been set forth and updated to conform to 2009 Ky. Acts ch. 104 in a proposed new administrative regulation 808 KAR 12:021, which will set forth the licensing and registration procedures for all entities and persons regulated by the department.

Section 1. 808 KAR 12:085, Registration of mortgage loan officer/broker, is hereby repealed.

ROBERT D. VANCE, Secretary

CHARLES A. VICE, Commissioner

APPROVED BY AGENCY: August 11, 2010

FILED WITH LRC: August 13, 2010 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2010 at 10 a.m., EDT, in the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 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 canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed admin-

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istrative regulation by the above date to the contact person:

CONTACT PERSON: Shaun T. Orme, Assistant General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390 ext. 282, fax (502) 573-2183.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shaun T. Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 808 KAR 12:085.

(b) The necessity of this administrative regulation: To repeal an unnecessary regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 286.8-140(1) authorizes the executive director to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 286.8.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Repeals a regulation that is no longer necessary.

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

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

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

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

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

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

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): N/A

(5) Provide an estimate of how much it will cost 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: 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: None

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

(9) TIERING: Is tiering applied? Tiering was not used because the former statute applied equally to all persons.

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 Financial Institutions.

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. N/A

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**PUBLIC PROTECTION CABINET
Department of Financial Institutions
Non-Depository Division of Financial Institutions
(Repealer)**

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

RELATES TO: KRS 286.8-260

STATUTORY AUTHORITY: KRS 286.8-140(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.8-140(1) authorizes the commissioner to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 286.8. KRS 286.8-260(1) requires all persons registered under KRS Chapter 286.8 to complete certain continuing education requirements. This administrative regulation establishing procedures for the continuing education of registrants is no longer necessary as these procedures have been set forth and updated to conform to 2009 Ky. Acts ch. 104 in a proposed new administrative regulation, 808 KAR 12:021, which will set forth the licensing and registration procedures for all entities and persons regulated by the department.

Section 1. 808 KAR 12:095, Continuing education requirements, is hereby repealed.

ROBERT D. VANCE, Secretary

CHARLES A. VICE, Commissioner

APPROVED BY AGENCY: August 11, 2010

FILED WITH LRC: August 13, 2010 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2010 at 10 a.m., EDT, in the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 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 canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 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: Shaun T. Orme, Assistant General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390 ext. 282, fax (502) 573-2183.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shaun T. Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 808 KAR 12:095.

(b) The necessity of this administrative regulation: To repeal an unnecessary regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 286.8-140(1) authorizes the executive director to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 286.8.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Repeals a regulation that is no longer necessary.

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

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

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

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

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

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

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): N/A

(5) Provide an estimate of how much it will cost 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: 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: None

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

(9) TIERING: Is tiering applied? Tiering was not used because the former statute applied equally to all persons.

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 Financial Institutions.

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. N/A

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

(b) How much revenue will this administrative regulation gen-

erate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

810 KAR 1:120. Exotic wagering.

RELATES TO: KRS 230.210-230.375, 230.990

STATUTORY AUTHORITY: KRS 230.215, 230.240, 230.260, 230.280, 230.290, 230.300, 230.310, 230.320, 230.361, 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) grants the commission the authority to regulate conditions under which thoroughbred racing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating mutuel wagering on horse races under the pari-mutuel system of wagering. This administrative regulation establishes the procedures and regulations governing exotic wagering under KRS Chapter 230 and 810 KAR Chapter 1.

Section 1. All Pari-mutuel Wagers on an Historical Horse Race Are Exotic Wagers. All pari-mutuel wagers other than win, place, or show wagers on a live horse race are exotic wagers.

Section 2. Exotic Wagers to Be Approved by Commission. (1) An association shall not offer an exotic wager on any live or historical horse race without the prior written approval of the commission.

(2) An association making a request to offer an exotic wager on a live or historical horse race may make an oral presentation to the commission regarding the wager prior to the commission deciding on the request.

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

(b) The presentation shall be limited to the information contained in the written request and any supplemental information relevant to the commission's determination of the suitability of the wager.

(c) The commission may require an association to clarify or otherwise respond to questions concerning the written request as a condition to approval of the exotic wager.

(3) The commission may request additional information from an association regarding the exotic wager if the additional information would assist the commission in deciding whether to approve it.

(4) In reviewing a written request for an exotic wager, 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 wager should be approved.

(5) The commission or its designee shall review and test the exotic wager and shall give its approval if it is satisfied that:

(a) The wager does not adversely affect the safety or integrity of horse racing or pari-mutuel wagering in the Commonwealth; and

(b) The wager complies with KRS Chapter 230 and these administrative regulations.

(6) The commission shall have the right to withdraw the approval of any exotic wager if it determines that the criteria set forth in subsection (5) of this section are no longer being met.

(7) An association shall not implement any change or modification to the practices, procedures, or representations upon which the approval of the exotic wager was based without the prior written approval of the commission.

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Section 3. Exotic Wagers on a Live Horse Race. (1) Except as set forth in subsection (2) of this section, an association shall submit a written request to the commission for permission to offer any exotic wager on a live horse race, which shall include a detailed description of the rules that apply to the wager and the method of calculating payouts.

(2) If the rules have not been modified since the wager was approved by the commission, an association shall not be required to seek the commission's approval to offer the following previously approved exotic wagers on live horse races: Exacta, Perfecta, Quinella, Trifecta, Superfecta, Double Perfecta, Big Q, Twin Trifecta, Daily Double, Super High 5, Pick-3, Pick-4, and Pick-6.

Section 4. Exotic Wagers on an Historical Horse Race. (1) An association shall submit a written request to the commission for permission to offer any exotic wager on an historical horse race, which shall include:

(a) The types, number, and denominations of pari-mutuel wagers to be offered;

(b) A detailed description of the rules that apply to the pari-mutuel wager and the method of calculating payouts, including how money will be allocated to the seed pool;

(c) The days and hours of operation during which wagering on historical horse races will be offered;

(d) A detailed description of the proposed designated area and the terminal(s) on which the pari-mutuel wagers shall be made, including an architect's rendering of the proposed designated area which describes the size, construction, layout, capacity, number of terminals, location of surveillance and other security equipment, and at least one (1) photograph of the designated area when construction is completed;

(e) The practices and procedures that will ensure the security, safety, and comfort of patrons in the designated area;

(f) The manufacturer, make, and model of the terminal, including a copy of all literature supplied by the manufacturer of the terminal;

(g) The maintenance and repair procedures that will ensure the integrity of the terminals;

(h) A complete list of individuals who are authorized to examine and repair the terminals for any reason; and

(i) A memorandum outlining the terms of the agreement between the association and either the Kentucky Horsemen's Benevolent and Protective Association or the Kentucky Thoroughbred Association/Kentucky Thoroughbred Owners and Breeders referenced in Section 6(2) of this administrative regulation.

(2)(a) Except as set forth in paragraph (b) of this subsection, each association that is approved by the commission to offer exotic wagering on an historical horse race shall request, in any application submitted for a license, to conduct live horse racing pursuant to KRS 230.300 and 810 KAR 1:037,

1. No less than 100 percent of the number of racing days initially requested by the association in its application to conduct thoroughbred racing for the 2010 racing year; and

2. No less than 100 percent of the number of races initially requested by the association in its application to conduct thoroughbred racing for the 2010 racing year.

(b) An association may apply for less than 100 percent of the number of racing days initially applied for by the association in its application to conduct thoroughbred racing for 2010, or the number of races initially applied for by the association in its application to conduct thoroughbred racing for 2010, if written approval is obtained from the commission, and either the Kentucky Horsemen's Benevolent and Protective Association or the Kentucky Thoroughbred Association/Kentucky Thoroughbred Owners and Breeders, as appropriate.

Section 5. Terminals Used for Wagering on an Historical Horse Race. (1) Wagering on historical horse races shall be conducted only on terminals approved by the commission. The commission shall not require any particular make of terminal.

(2)(a) The commission shall require testing of each terminal used for wagering on historical horse races by an independent testing laboratory to ensure its integrity and proper working order.

(b) The independent testing laboratory shall be chosen by the

commission and the expense of the testing shall be paid by the association offering the wagering on historical horse races.

(3) Each terminal for wagering on an historical horse race shall display odds or pool amounts that the patron will receive for a winning wager on each pari-mutuel wagering pool.

Section 6. Takeout. (1) Each association conducting exotic wagering on historical horse races shall deduct a takeout, which shall not exceed the percentages set forth in KRS 230.3615.

(2)(a) Each association shall enter into an agreement with either the Kentucky Horsemen's Benevolent and Protective Association or the Kentucky Thoroughbred Association/Kentucky Thoroughbred Owners and Breeders, as appropriate, establishing the allocation of the takeout on all exotic wagers on historical horse races offered by the association. The agreement shall apply to all exotic wagers on historical horse races offered, or to be offered, by the association during the term of the agreement.

(b) The agreement shall include provisions allocating a percentage of the takeout to purses on live races run by the association.

(c) Each association shall provide a memorandum outlining the terms of the agreement to the commission.

Section 7. Severability. In the event that any provision or administrative regulation of this chapter is found to be invalid, the remaining provisions of this chapter shall not be affected nor diminished thereby.

ROBERT M. BECK, JR., Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: July 20, 2010

FILED WITH LRC: July 20, 2010 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 29, 2010 at 10 a.m., in the clubhouse of The Red Mile, 1200 Red Mile Rd., Lexington, Kentucky 40504-2652. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by September 22, 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 September 30, 2010. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Timothy A. West

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation clarifies the process for licensed racing associations to request permission from the Kentucky Horse Racing Commission (the "commission") to offer exotic forms of pari-mutuel wagers on live and historical horse races. "Exotic wagers" are defined as "any pari-mutuel wager placed on a live or historical horse race, other than a win, place, or show wager placed on a live horse race." It includes a process for associations to request permission to offer pari-mutuel wagering on live and historical horse races and establishes criteria for the commission to evaluate such requests.

(b) The necessity of this administrative regulation: This regulation is necessary for the commission to regulate the integrity of pari-mutuel wagering in the Commonwealth.

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

ing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating mutuel wagering on horse races under the pari-mutuel system of wagering. This regulation establishes the procedures and regulations governing exotic forms of pari-mutuel wagering under KRS Chapter 230 and the commission's administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 230.361 requires the commission to promulgate administrative regulations governing and regulating mutuel wagering on horse races under the pari-mutuel system of wagering. This administrative regulation establishes the criteria for determining whether exotic wagers requested by licensed racing associations comply with the provisions of KRS Chapter 230 and the commission's administrative regulations.

(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: This administrative regulation will affect the eight currently-licensed racing associations in the Commonwealth, any applicant for the final racing association license, the owners and trainers who participate in racing in the Commonwealth, the jockeys who ride in the Commonwealth, the patrons who place pari-mutuel wagers on live and historical horse in the Commonwealth, and the commission.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The licensed racing associations will be required to follow the procedure outlined in the regulation to offer any exotic wager that has not been previously approved by the commission. If an association requests and is granted permission by the commission to offer pari-mutuel wagering on historical horse races, then the association will be required to conduct such pari-mutuel wagering in a designated area (as defined in 810 KAR 1:001). The associations that offer pari-mutuel wagering on historical horse races will also be required to enter into an agreement with the Horsemen's Benevolent and Protective Association or the Kentucky Thoroughbred Owners and Breeders Association, Inc. regarding the allocation of the takeout between the association and the horsemen and file a memorandum with the commission outlining the terms 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): If an association requests and receives permission to offer pari-mutuel wagering on historical horse races, then the association will incur costs constructing or renovating a designated area (as defined in 810 KAR 1:001) to house the terminals. An association will also incur costs purchasing or leasing commission-approved terminals and hiring additional employees to staff the designated area and maintain the terminals. Any association offering pari-mutuel wagering on historical horse races will also be required to reimburse the commission pursuant to KRS 230.240 to cover the commission's increased regulatory costs relating to compensation of additional personnel and other expenses.

The total increase in the commission's regulatory costs will be based upon the number of associations that offer pari-mutuel wagering on historical horse races and the number of terminals at each association. The increased costs will likely include the addition of new employees and equipment.

There will be no additional costs to owners, trainers, jockeys,

or patrons placing exotic wagers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The associations will have a defined process to follow to request exotic wagers. They will be able to offer increased pari-mutuel wagering options to patrons and can expect an increase in on-track attendance and total pari-mutuel handle. The increased revenue can be used to maintain and improve racing association facilities and supplement purses for live races run at each association. The increased purses will help the associations to compete with racing associations in neighboring states that offer expanded gaming options.

The owners, trainers, and jockeys will benefit from increased purses, as well as any improvements to an association's facilities.

The patrons will benefit from any improvements to an association's facilities as well as from increased pari-mutuel wagering options.

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

(a) Initially: See answer to question 4(b).

(b) On a continuing basis: With regards to pari-mutuel wagering on historical horse races, the commission anticipates that the first year such wagering is offered will see the greatest increase in regulatory costs. Thereafter, the commission expects the continuing costs to be mainly for employee compensation and expenses and equipment maintenance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The commission will be reimbursed by the associations for the additional employee compensation and other expenses pursuant to KRS 230.240.

(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 associations that request and receive permission to offer pari-mutuel wagering on historical horse races will be required to reimburse the commission for the cost of compensation of additional employees and other expenses pursuant to KRS 230.240.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The associations that request and receive permission to offer pari-mutuel wagering on historical horse races will be required to reimburse the commission for the cost of compensation of additional employees and other expenses pursuant to KRS 230.240.

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this administrative regulation will be applied equally to all of the regulated persons and entities.

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 and the Department of Revenue.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215, 230.240, 230.260, 230.280, 230.290, 230.300, 230.310, 230.320, 230.361, 230.370.

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. The commission anticipates that its regulatory costs will increase based upon the associations offering pari-mutuel wagering on historical horse races. The increased costs will likely include the addition of new employees and equipment. The total increase will be based upon the number of associations that offer pari-mutuel wagering on historical horse races and the number of terminals at each association. The associations that offer pari-mutuel wagering on historical horse races will be required to reimburse the commission the costs associated with compensation of employees and other expenses pursuant to KRS 230.240. The Department of Revenue may have

an increase in collection duties, but they are minimal and can be absorbed by the department.

(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 amount of tax revenue generated is dependent upon the number of terminals the associations install and operate. While that number is unknown at this time, it is estimated that annual tax revenue will be somewhat less than \$1,000 per terminal.

(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? Based upon the experience of Oaklawn Park, the commission anticipates that revenue will more than double from the first to the second year, and more than triple from the second to the third year.

(c) How much will it cost to administer this program for the first year? The increased regulatory costs of the commission will be based upon the number of associations that offer pari-mutuel wagering on historical horse races and the number of terminals installed at each association.

(d) How much will it cost to administer this program for subsequent years? In subsequent years, the commission anticipates the costs largely to come from employee compensation and equipment maintenance. The commission will be reimbursed for these costs by the associations offering wagering on historical horse races.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

811 KAR 1:250. Exotic wagering.

RELATES TO: KRS 230.210-230.375, 230.990

STATUTORY AUTHORITY: KRS 230.215, 230.240, 230.260, 230.280, 230.290, 230.300, 230.310, 230.320, 230.361, 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) grants the commission the authority to regulate conditions under which standardbred racing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating mutuel wagering on horse races under the pari-mutuel system of wagering. This administrative regulation establishes the procedures and regulations governing exotic wagering under KRS Chapter 230 and 811 KAR Chapter 1.

Section 1. All Pari-mutuel Wagers on an Historical Horse Race Are Exotic Wagers. All pari-mutuel wagers other than win, place, or show wagers on a live horse race are exotic wagers.

Section 2. Exotic Wagers to Be Approved by Commission. (1) An association shall not offer an exotic wager on any live or historical horse race without the prior written approval of the commission.

(2) An association making a request to offer an exotic wager on a live or historical horse race may make an oral presentation to the commission regarding the wager, prior to the commission deciding on the request.

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

(b) The presentation shall be limited to the information contained in the written request and any supplemental information relevant to the commission's determination of the suitability of the wager.

(c) The commission may require an association to clarify or otherwise respond to questions concerning the written request as a condition to approval of the exotic wager.

(3) The commission may request additional information from an association regarding the exotic wager if the additional informa-

tion would assist the commission in deciding whether to approve it.

(4) In reviewing a written request for an exotic wager, 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 wager should be approved.

(5) The commission or its designee shall review and test the exotic wager and shall give its approval if it is satisfied that:

(a) The wager does not adversely affect the safety or integrity of horse racing or pari-mutuel wagering in the Commonwealth; and

(b) The wager complies with KRS Chapter 230 and these administrative regulations.

(6) The commission shall have the right to withdraw the approval of any exotic wager if it determines that the criteria set forth in subsection (5) of this section are no longer being met.

(7) An association shall not implement any change or modification to the practices, procedures, or representations upon which the approval of the exotic wager was based without the prior written approval of the commission.

Section 3. Exotic Wagers on a Live Horse Race. (1) Except as set forth in subsection (2) of this section, an association shall submit a written request to the commission for permission to offer any exotic wager on a live horse race, which shall include a detailed description of the rules that apply to the wager and the method of calculating payouts.

(2) If the rules have not been modified since the wager was approved by the commission, an association shall not be required to seek the commission's approval to offer the following previously approved exotic wagers on live horse races: Exacta, Perfecta, Quinella, Trifecta, Superfecta, Double Perfecta, Big Q, Twin Trifecta, Daily Double, Super High 5, Pick-3, Pick-4, and Pick-6.

Section 4. Exotic Wagers on an Historical Horse Race. (1) An association shall submit a written request to the commission for permission to offer any exotic wager on an historical horse race, which shall include:

(a) The types, number, and denominations of pari-mutuel wagers to be offered;

(b) A detailed description of the rules that apply to the pari-mutuel wager and the method of calculating payouts, including how money will be allocated to the seed pool;

(c) The days and hours of operation during which wagering on historical horse races will be offered;

(d) A detailed description of the proposed designated area and the terminal(s) on which the pari-mutuel wagers shall be made, including an architect's rendering of the proposed designated area which describes the size, construction, layout, capacity, number of terminals, location of surveillance and other security equipment, and at least one (1) photograph of the designated area when construction is completed;

(e) The practices and procedures that will ensure the security, safety, and comfort of patrons in the designated area;

(f) The manufacturer, make, and model of the terminal, including a copy of all literature supplied by the manufacturer of the terminal;

(g) The maintenance and repair procedures that will ensure the integrity of the terminals;

(h) A complete list of individuals who are authorized to examine and repair the terminals for any reason; and

(i) A memorandum outlining the terms of the agreement between the association and the Kentucky Harness Horsemen's Association referenced in Section 6(2) of this administrative regulation.

(2)(a) Except as set forth in paragraph (b) of this subsection, each association that is approved by the commission to offer exotic wagering on an historical horse race shall request, in any application submitted for a license to conduct live horse racing pursuant to KRS 230.300 and 811 KAR 1:037;

1. No less than 100 percent of the number of racing days initially requested by the association in its application to conduct standardbred racing for the 2010 racing year; and

2. No less than 100 percent of the number of races initially requested by the association in its application to conduct standardbred racing for the 2010 racing year.

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(b) An association may apply for less than 100 percent of the number of racing days initially applied for by the association in its application to conduct standardbred racing for 2010, or the number of races initially applied for by the association in its application to conduct standardbred racing for 2010, if written approval is obtained from the commission and the Kentucky Harness Horsemen's Association.

Section 5. Terminals Used for Wagering on an Historical Horse Race. (1) Wagering on historical horse races shall be conducted only on terminals approved by the commission. The commission shall not require any particular make of terminal.

(2)(a) The commission shall require testing of each terminal used for wagering on historical horse races by an independent testing laboratory to ensure its integrity and proper working order.

(b) The independent testing laboratory shall be chosen by the commission and the expense of the testing shall be paid by the association offering the wagering on historical horse races.

(3) Each terminal for wagering on an historical horse race shall display odds or pool amounts that the patron will receive for a winning wager on each pari-mutuel wagering pool.

Section 6. Takeout. (1) Each association conducting exotic wagering on historical horse races shall deduct a takeout, which shall not exceed the percentages set forth in KRS 230.750.

(2)(a) Each association shall enter into an agreement with the Kentucky Harness Horsemen's Association establishing the allocation of the takeout on all exotic wagers on historical horse races offered by the association. The agreement shall apply to all exotic wagers on historical horse races offered, or to be offered, by the association during the term of the agreement.

(b) The agreement shall include provisions allocating a percentage of the takeout to purses on live races run by the association.

(c) Each association shall provide a memorandum outlining the terms of the agreement to the commission.

Section 7. Severability. In the event that any provision or administrative regulation of this chapter is found to be invalid, the remaining provisions of this chapter shall not be affected nor diminished thereby.

ROBERT M. BECK, JR., Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: July 20, 2010

FILED WITH LRC: July 20, 2010 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 29, 2010 at 10 a.m., in the clubhouse of The Red Mile, 1200 Red Mile Rd., Lexington, Kentucky 40504-2652. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by September 22, 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 September 30, 2010. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Timothy A. West

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation clarifies the process for licensed racing associations to request

permission from the Kentucky Horse Racing Commission (the "commission") to offer exotic forms of pari-mutuel wagers on live and historical horse races. "Exotic wagers" are defined as "any pari-mutuel wager placed on a live or historical horse race, other than a win, place, or show wager placed on a live horse race." It includes a process for associations to request permission to offer pari-mutuel wagering on live and historical horse races and establishes criteria for the commission to evaluate such requests.

(b) The necessity of this administrative regulation: This regulation is necessary for the commission to regulate the integrity of pari-mutuel wagering in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which standardbred racing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating mutuel wagering on horse races under the pari-mutuel system of wagering. This regulation establishes the procedures and regulations governing exotic forms of pari-mutuel wagering under KRS Chapter 230 and the commission's administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 230.361 requires the commission to promulgate administrative regulations governing and regulating mutuel wagering on horse races under the pari-mutuel system of wagering. This administrative regulation establishes the criteria for determining whether exotic wagers requested by licensed racing associations comply with the provisions of KRS Chapter 230 and the commission's administrative regulations.

(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: This administrative regulation will affect the eight currently-licensed racing associations in the Commonwealth, any applicant for the final racing association license, the owners and trainers who participate in racing in the Commonwealth, the jockeys who ride in the Commonwealth, the patrons who place pari-mutuel wagers on live and historical horse in the Commonwealth, and the commission.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The licensed racing associations will be required to follow the procedure outlined in the regulation to offer any exotic wager that has not been previously approved by the commission. If an association requests and is granted permission by the commission to offer pari-mutuel wagering on historical horse races, then the association will be required to conduct such pari-mutuel wagering in a designated area (as defined in 811 KAR 1:005). The associations that offer pari-mutuel wagering on historical horse races will also be required to enter into an agreement with the Kentucky Harness Horsemen's Association regarding the allocation of the takeout between the association and the horsemen and file a memorandum with the commission outlining the terms 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): If an association requests and receives permission to offer pari-mutuel wagering on historical horse races, then the association will incur costs constructing or renovating a designated area (as defined in 811 KAR 1:005) to house the terminals. An associa-

tion will also incur costs purchasing or leasing commission-approved terminals and hiring additional employees to staff the designated area and maintain the terminals. Any association offering pari-mutuel wagering on historical horse races will also be required to reimburse the commission pursuant to KRS 230.240 to cover the commission's increased regulatory costs relating to compensation of additional personnel and other expenses.

The total increase in the commission's regulatory costs will be based upon the number of associations that offer pari-mutuel wagering on historical horse races and the number of terminals at each association. The increased costs will likely include the addition of new employees and equipment.

There will be no additional costs to owners, trainers, jockeys, or patrons placing exotic wagers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The associations will have a defined process to follow to request exotic wagers. They will be able to offer increased pari-mutuel wagering options to patrons and can expect an increase in on-track attendance and total pari-mutuel handle. The increased revenue can be used to maintain and improve racing association facilities and supplement purses for live races run at each association. The increased purses will help the associations to compete with racing associations in neighboring states that offer expanded gaming options.

The owners, trainers, and jockeys will benefit from increased purses, as well as any improvements to an association's facilities.

The patrons will benefit from any improvements to an association's facilities as well as from increased pari-mutuel wagering options.

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

(a) Initially: See answer to question 4(b).

(b) On a continuing basis: With regards to pari-mutuel wagering on historical horse races, the commission anticipates that the first year such wagering is offered will see the greatest increase in regulatory costs. Thereafter, the commission expects the continuing costs to be mainly for employee compensation and expenses and equipment maintenance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The commission will be reimbursed by the associations for the additional employee compensation and other expenses pursuant to KRS 230.240.

(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 associations that request and receive permission to offer pari-mutuel wagering on historical horse races will be required to reimburse the commission for the cost of compensation of additional employees and other expenses pursuant to KRS 230.240.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The associations that request and receive permission to offer pari-mutuel wagering on historical horse races will be required to reimburse the commission for the cost of compensation of additional employees and other expenses pursuant to KRS 230.240.

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this administrative regulation will be applied equally to all of the regulated persons and entities.

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 and the Department of Revenue.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215, 230.240, 230.260, 230.280, 230.290, 230.300, 230.310, 230.320, 230.361, 230.370.

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. The commission anticipates that its regulatory costs will increase based upon the associations offering pari-mutuel wagering on historical horse races. The increased costs will likely include the addition of new employees and equipment. The total increase will be based upon the number of associations that offer pari-mutuel wagering on historical horse races and the number of terminals at each association. The associations that offer pari-mutuel wagering on historical horse races will be required to reimburse the commission the costs associated with compensation of employees and other expenses pursuant to KRS 230.240. The Department of Revenue may have an increase in collection duties, but they are minimal and can be absorbed by the department.

(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 amount of tax revenue generated is dependent upon the number of terminals the associations install and operate. While that number is unknown at this time, it is estimated that annual tax revenue will be somewhat less than \$1,000 per terminal.

(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? Based upon the experience of Oaklawn Park, the commission anticipates that revenue will more than double from the first to the second year, and more than triple from the second to the third year.

(c) How much will it cost to administer this program for the first year? The increased regulatory costs of the commission will be based upon the number of associations that offer pari-mutuel wagering on historical horse races and the number of terminals installed at each association.

(d) How much will it cost to administer this program for subsequent years? In subsequent years, the commission anticipates the costs largely to come from employee compensation and equipment maintenance. The commission will be reimbursed for these costs by the associations offering wagering on historical horse races.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

811 KAR 2:160. Exotic wagering.

RELATES TO: KRS 230.210-230.375, 230.990

STATUTORY AUTHORITY: KRS 230.215, 230.240, 230.260, 230.280, 230.290, 230.300, 230.310, 230.320, 230.361, 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) grants the commission the authority to regulate conditions under which quarter horse, appaloosa and arabian racing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating mutuel wagering on horse races under the pari-mutuel system of wagering. This administrative regulation establishes the procedures and regulations governing exotic wagering under KRS Chapter 230 and 811 KAR Chapter 2.

Section 1. All Pari-mutuel Wagers on an Historical Horse Race Are Exotic Wagers. All pari-mutuel wagers other than win, place, or show wagers on a live horse race are exotic wagers.

Section 2. Exotic Wagers to Be Approved by Commission. (1) An association shall not offer an exotic wager on any live or historical horse race without the prior written approval of the commission.

(2) An association making a request to offer an exotic wager

on a live or historical horse race may make an oral presentation to the commission regarding the wager, prior to the commission deciding on the request.

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

(b) The presentation shall be limited to the information contained in the written request and any supplemental information relevant to the commission's determination of the suitability of the wager.

(c) The commission may require an association to clarify or otherwise respond to questions concerning the written request as a condition to approval of the exotic wager.

(3) The commission may request additional information from an association regarding the exotic wager if the additional information would assist the commission in deciding whether to approve it.

(4) In reviewing a written request for an exotic wager, 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 wager should be approved.

(5) The commission or its designee shall review and test the exotic wager and shall give its approval if it is satisfied that:

(a) The wager does not adversely affect the safety or integrity of horse racing or pari-mutuel wagering in the Commonwealth; and

(b) The wager complies with KRS Chapter 230 and these administrative regulations.

(6) The commission shall have the right to withdraw the approval of any exotic wager if it determines that the criteria set forth in subsection (5) of this section are no longer being met.

(7) An association shall not implement any change or modification to the practices, procedures, or representations upon which the approval of the exotic wager was based without the prior written approval of the commission.

Section 3. Exotic Wagers on a Live Horse Race. (1) Except as set forth in subsection (2) of this section, an association shall submit a written request to the commission for permission to offer any exotic wager on a live horse race, which shall include a detailed description of the rules that apply to the wager and the method of calculating payouts.

(2) If the rules have not been modified since the wager was approved by the commission, an association shall not be required to seek the commission's approval to offer the following previously approved exotic wagers on live horse races: Exacta, Perfecta, Quinella, Trifecta, Superfecta, Double Perfecta, Big Q, Twin Trifecta, Daily Double, Super High 5, Pick-3, Pick-4, and Pick-6.

Section 4. Exotic Wagers on an Historical Horse Race. (1) An association shall submit a written request to the commission for permission to offer any exotic wager on an historical horse race, which shall include:

(a) The types, number, and denominations of pari-mutuel wagers to be offered;

(b) A detailed description of the rules that apply to the pari-mutuel wager and the method of calculating payouts, including how money will be allocated to the seed pool;

(c) The days and hours of operation during which wagering on historical horse races will be offered;

(d) A detailed description of the proposed designated area and the terminal(s) on which the pari-mutuel wagers shall be made, including an architect's rendering of the proposed designated area which describes the size, construction, layout, capacity, number of terminals, location of surveillance and other security equipment, and at least one (1) photograph of the designated area when construction is completed;

(e) The practices and procedures that will ensure the security, safety, and comfort of patrons in the designated area;

(f) The manufacturer, make, and model of the terminal, including a copy of all literature supplied by the manufacturer of the terminal;

(g) The maintenance and repair procedures that will ensure the integrity of the terminals;

(h) A complete list of individuals who are authorized to examine and repair the terminals for any reason; and

(i) A memorandum outlining the terms of the agreement refe-

renced in Section 6(2) of this administrative regulation between the association and one of the following horsemen's organizations, as applicable: the Kentucky Quarter Horse Racing Association; the Arabian Jockey Club; or, a horsemen's organization representing appaloosa racing.

(2)(a) Except as set forth in paragraph (b) of this subsection, each association that is approved by the commission to offer exotic wagering on an historical horse race shall request, in any application submitted for a license to conduct live horse racing pursuant to KRS 230.300 and 811 KAR 2:140,

1. No less than 100 percent of the number of racing days initially requested by the association in its application to conduct quarter horse, appaloosa or Arabian racing for the 2010 racing year; and

2. No less than 100 percent of the number of races initially requested by the association in its application to conduct quarter horse, appaloosa or Arabian racing for the 2010 racing year.

(b) An association may apply for less than 100 percent of the number of racing days initially applied for by the association in its application to conduct quarter horse, appaloosa and arabian racing for 2010, or the number of races initially applied for by the association in its application to conduct quarter horse, appaloosa and arabian racing for 2010, if written approval is obtained from the commission and one of the following horsemen's organizations, as applicable: the Kentucky Quarter Horse Racing Association; the Arabian Jockey Club; or a horsemen's organization representing appaloosa racing.

Section 5. Terminals Used for Wagering on an Historical Horse race. (1) Wagering on historical horse races shall be conducted only on terminals approved by the commission. The commission shall not require any particular make of terminal.

(2)(a) The commission shall require testing of each terminal used for wagering on historical horse races by an independent testing laboratory to ensure its integrity and proper working order.

(b) The independent testing laboratory shall be chosen by the commission and the expense of the testing shall be paid by the association offering the wagering on historical horse races.

(3) Each terminal for wagering on an historical horse race shall display odds or pool amounts that the patron will receive for a winning wager on each pari-mutuel wagering pool.

Section 6. Takeout. (1) Each association conducting exotic wagering on historical horse races shall deduct a takeout, which shall not exceed the percentages set forth in KRS 230.3615.

(2)(a) Each association shall enter into an agreement with one of the following horsemen's organizations, as applicable, to establish the allocation of the takeout on all exotic wagers on historical horse races offered by the association: the Kentucky Quarter Horse Racing Association; the Arabian Jockey Club; or a horsemen's organization representing appaloosa racing. The agreement shall apply to all exotic wagers on historical horse races offered, or to be offered, by the association during the term of the agreement.

(b) The agreement shall include provisions allocating a percentage of the takeout to purses on live races run by the association.

(c) Each association shall provide a memorandum outlining the terms of the agreement to the commission.

Section 7. Severability. In the event that any provision or administrative regulation of this chapter is found to be invalid, the remaining provisions of this chapter shall not be affected nor diminished thereby.

ROBERT M. BECK, JR., Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: July 20, 2010

FILED WITH LRC: July 20, 2010 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 29, 2010 at 10 a.m., in the clubhouse of The Red Mile, 1200 Red Mile Rd., Lexington, Kentucky 40504-2652. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by September 22, 2010, five working days prior to the hearing, of their intent to attend. If no

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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 September 30, 2010. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Timothy A. West

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation clarifies the process for licensed racing associations to request permission from the Kentucky Horse Racing Commission (the "commission") to offer exotic forms of pari-mutuel wagers on live and historical horse races. "Exotic wagers" are defined as "any pari-mutuel wager placed on a live or historical horse race, other than a win, place, or show wager placed on a live horse race." It includes a process for associations to request permission to offer pari-mutuel wagering on live and historical horse races and establishes criteria for the commission to evaluate such requests.

(b) The necessity of this administrative regulation: This regulation is necessary for the commission to regulate the integrity of pari-mutuel wagering in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which quarter horse, appaloosa and arabian racing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating mutual wagering on horse races under the pari-mutuel system of wagering. This regulation establishes the procedures and regulations governing exotic forms of pari-mutuel wagering under KRS Chapter 230 and the commission's administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 230.361 requires the commission to promulgate administrative regulations governing and regulating mutual wagering on horse races under the pari-mutuel system of wagering. This administrative regulation establishes the criteria for determining whether exotic wagers requested by licensed racing associations comply with the provisions of KRS Chapter 230 and the commission's administrative regulations.

(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: This administrative regulation will affect the eight currently-licensed racing associations in the Commonwealth, any applicant for the final racing association license, the owners and trainers who participate in racing in the Commonwealth, the jockeys who ride in the Commonwealth, the patrons who place pari-mutuel wagers on live and historical horse in the Commonwealth, and the commission.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administra-

tive regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The licensed racing associations will be required to follow the procedure outlined in the regulation to offer any exotic wager that has not been previously approved by the commission. If an association requests and is granted permission by the commission to offer pari-mutuel wagering on historical horse races, then the association will be required to conduct such pari-mutuel wagering in a designated area (as defined in 811 KAR 2:010). The associations that offer pari-mutuel wagering on historical horse races will also be required to enter into an agreement with the Kentucky Quarter Horse Racing Association, or the Arabian Jockey Club, or a horsemen's organization representing the appaloosa breed regarding the allocation of the takeout between the association and the horsemen and file a memorandum with the commission outlining the terms 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): If an association requests and receives permission to offer pari-mutuel wagering on historical horse races, then the association will incur costs constructing or renovating a designated area (as defined in 811 KAR 2:010) to house the terminals. An association will also incur costs purchasing or leasing commission-approved terminals and hiring additional employees to staff the designated area and maintain the terminals. Any association offering pari-mutuel wagering on historical horse races will also be required to reimburse the commission pursuant to KRS 230.240 to cover the commission's increased regulatory costs relating to compensation of additional personnel and other expenses.

The total increase in the commission's regulatory costs will be based upon the number of associations that offer pari-mutuel wagering on historical horse races and the number of terminals at each association. The increased costs will likely include the addition of new employees and equipment.

There will be no additional costs to owners, trainers, jockeys, or patrons placing exotic wagers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The associations will have a defined process to follow to request exotic wagers. They will be able to offer increased pari-mutuel wagering options to patrons and can expect an increase in on-track attendance and total pari-mutuel handle. The increased revenue can be used to maintain and improve racing association facilities and supplement purses for live races run at each association. The increased purses will help the associations to compete with racing associations in neighboring states that offer expanded gaming options.

The owners, trainers, and jockeys will benefit from increased purses, as well as any improvements to an association's facilities.

The patrons will benefit from any improvements to an association's facilities as well as from increased pari-mutuel wagering options.

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

(a) Initially: See answer to question 4(b).

(b) On a continuing basis: With regards to pari-mutuel wagering on historical horse races, the commission anticipates that the first year such wagering is offered will see the greatest increase in regulatory costs. Thereafter, the commission expects the continuing costs to be mainly for employee compensation and expenses and equipment maintenance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The commission will be reimbursed by the associations for the additional employee compensation and other expenses pursuant to KRS 230.240.

(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 associations that request and receive permission to offer pari-mutuel wagering on historical horse races will be required to reimburse the commission for the cost of compensation of additional employees and other expenses pursuant to KRS 230.240.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The associations that request and receive permission to offer pari-mutuel wagering on historical horse races will be required to reimburse the commission for the cost of compensation of additional employees and other expenses pursuant to KRS 230.240.

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this administrative regulation will be applied equally to all of the regulated persons and entities.

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 and the Department of Revenue.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215, 230.240, 230.260, 230.280, 230.290, 230.300, 230.310, 230.320, 230.361, 230.370.

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. The commission anticipates that its regulatory costs will increase based upon the associations offering pari-mutuel wagering on historical horse races. The increased costs will likely include the addition of new employees and equipment. The total increase will be based upon the number of associations that offer pari-mutuel wagering on historical horse races and the number of terminals at each association. The associations that offer pari-mutuel wagering on historical horse races will be required to reimburse the commission the costs associated with compensation of employees and other expenses pursuant to KRS 230.240. The Department of Revenue may have an increase in collection duties, but they are minimal and can be absorbed by the department.

(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 amount of tax revenue generated is dependent upon the number of terminals the associations install and operate. While that number is unknown at this time, it is estimated that annual tax revenue will be somewhat less than \$1,000 per terminal.

(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? Based upon the experience of Oaklawn Park, the commission anticipates that revenue will more than double from the first to the second year, and more than triple from the second to the third year.

(c) How much will it cost to administer this program for the first year? The increased regulatory costs of the commission will be based upon the number of associations that offer pari-mutuel wagering on historical horse races and the number of terminals installed at each association.

(d) How much will it cost to administer this program for subsequent years? In subsequent years, the commission anticipates the costs largely to come from employee compensation and equipment maintenance. The commission will be reimbursed for these costs by the associations offering wagering on historical horse races.

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 Contractors
(New Administrative Regulation)

815 KAR 8:035. Reciprocal licensing requirements.

RELATES TO: KRS 198B.664, 198B.666, 198B.668.

STATUTORY AUTHORITY: KRS 198B.654, 198B.666.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.654 and KRS 198B.666 requires the Board of Heating, Ventilation and Air Conditioning Contractors to establish requirements for reciprocal licensing of HVAC Master Contractors and HVAC Journeymen. This administrative regulation establishes the application process for obtaining a Kentucky HVAC license through reciprocity.

Section 1. An applicant for reciprocity shall:

(1) Comply with the requirements established in the reciprocity agreement between Kentucky and the state in which the applicant is licensed;

(2)(a) Submit the following application fee:

1. For a Master HVAC Contractor license, a nonrefundable application fee of \$250 for a twelve (12) month license. The initial license fee may be prorated for not less than seven (7) months or more than eighteen (18) months and shall expire on the final day of the applicant's birth month; or

2. For an HVAC Journeyman license, a non-refundable application fee of fifty (50) dollars for a twelve (12) month license. The initial license fee may be prorated for not less than seven (7) months or more than eighteen (18) months and shall expire on the final day of the applicant's birth month.

(b) If both licenses are being applied for, an application fee shall be submitted for each license with application.

(3) Submit a completed Reciprocity HVAC Application, Form HVAC-30, which is incorporated herein by reference as if set out in its entirety.

Section 2. Incorporation by Reference. (1) Form HVAC-30, "HVAC Reciprocity Application", August 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, Division of Heating, Ventilation and Air Conditioning, 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 D. VANCE, Secretary

APPROVED BY AGENCY: August 12, 2010

FILED WITH LRC: August 13, 2010 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 2010, at 9 a.m., EDT, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 16, 2010 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394 Ext. 144, fax (502) 573-1057.

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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 requirements for reciprocal licensing of HVAC master contractors and HVAC journeymen.

(b) The necessity of this administrative regulation: KRS 198B.654 and 198B.666 requires the Board of Heating, Ventilation and Air Conditioning Contractors to establish requirements for reciprocal licensing of HVAC master contractors and HVAC journeymen.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the application requirements for reciprocal licensing as required by KRS 198B.654 and 198B.666 and incorporates the HVAC reciprocal application.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation sets forth the application requirements for reciprocal HVAC licensing and incorporates the reciprocal application to be submitted by applicants.

(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 this is a new administrative regulation.

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

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

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

(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 and those applying for reciprocal HVAC master and journeymen licensing.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Department will continue to administer, review and grant reciprocal license applications. Persons seeking a reciprocal HVAC license will submit the incorporated application and required documentation to the Department, Division of HVAC.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs associated with applying for reciprocity are established within the licensing fee schedule for HVAC. There are no new or additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Department and potential reciprocal applicants will benefit by having the process for reciprocal HVAC licenses included in an administrative regulation. The information and process will be readily available to anyone seeking reciprocal licensure once enacted as a regulation.

(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 reciprocal licensing.

(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 necessity to increase fees or funding to implement this new administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any new fees or result in an increase of existing fees.

(9) TIERING: Is tiering applied? Tiering is not applied 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 HVAC and those entities applying for reciprocal licensing 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 regulation is authorized by KRS 198B.654 and 198B.666.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year. The actual financial impact is determined by the number of reciprocal applicants and therefore cannot be determined.

(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 actual financial impact is determined by the number of reciprocal applicants and therefore cannot be determined.

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

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

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 from this administrative regulation to state or local government. Reciprocal HVAC licenses have been issued by the Division pursuant to statutory authority, this administrative regulation merely formalizes the existing application procedure and requirements into an administrative regulation.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of August 10, 2010

Call to Order and Roll Call

The August meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, August 10, 2010, at 1:00 p.m., in Room 149 of the Capitol Annex. Representative Leslie Combs, Co-Chair, called the meeting to order, the roll call was taken. The minutes of the July 2010 meeting were approved.

Present were:

Members: Senators Elizabeth Tori, David Givens, Alice Forgy-Kerr, and Joey Pendleton and Representatives Leslie Combs, Robert Damron, Jimmie Lee, and Danny Ford.

LRC Staff: Dave Nicholas, Donna Little, Sarah Amburgey, Chad Collins, Emily Harkenrider, Karen Howard, Emily Caudill, Jennifer Beeler, and Laura Napier.

Guests: Becky Gilpatrick, Melissa Justice, Kentucky Higher Education Assistance Authority; Robert Brown, Alicia Sneed, Education Professional Standards Board; Sarah Ball Johnson, Kathryn Gabhart, State Board of Elections; Jennifer Jones, Schugler Olt, Kentucky Retirement Systems; Lloyd Vest, Board of Medical Licensure; Larry Disney, Jim Grawe, Kentucky Real Estate Appraisers Board; Gerard Buynak, Catherine York, Department of Fish and Wildlife Resources; Steve Sims, Clint Quarles, Department of Agriculture; Sam Devine, Department of Parks; Amy Denham, David Gooch, Johnny Greene, Michael Mullins, Allen Luttrell, Department for Natural Resources; Steve Lynn, Justice and Public Safety Cabinet; Ann D'Angelo, Randall Royer, Transportation Cabinet; Clay Lamb, Jeff Gatewood, Department of Workforce Investment; Kristi Redmon, Labor Cabinet; Dawn Bellis, Timothy House, Richard Moloney, Department of Housing, Buildings and Construction; Carrie Banahan, Rebel Baker, Shirley Eldridge, Phyllis Sosa, Cabinet for Health and Family Services; Steven Milry.

The Administrative Regulation Review Subcommittee met on Tuesday, August 10, 2010, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY: Division of Student and Administrative Services: Kentucky Loan Program

11 KAR 3:100. Administrative wage garnishment. Becky Gilpatrick, Student Aid Branch manager, and Melissa Justice, senior associate counsel, represented the division.

KHEAA Grant Programs

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

EDUCATION PROFESSIONAL STANDARDS BOARD: Assessment

16 KAR 6:010. Written examination prerequisites for teacher certification. Alicia Sneed, director of legal services, and Robert Brown, director of the Division of Professional Learning and Assessment, represented the board.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 3, and 5 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

16 KAR 6:030. Examination prerequisites for principal certification.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3 through 6, and 8 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

STATE BOARD OF ELECTIONS: Forms and Procedures

31 KAR 4:130 & E. Facsimile transmission of the Federal Post Card Application and delivery of the absentee ballot for military,

their dependents, and overseas citizens. Sarah Ball Johnson, executive director, and Kathryn Gabhart, general counsel, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to clarify a statutory citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 2, 4, and 5 to comply with the drafting and format requirements of KRS Chapter 13A; and (4) to amend Section 4 to clarify that the application for voter registration or absentee ballot shall be valid for all elections that occur after the application is received until the next general election. Without objection, and with agreement of the agency, the amendments were approved.

31 KAR 4:140 & E. Electronic submission of the Federal Post Card Application and delivery of the absentee ballot for military, their dependents, and overseas citizens.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to add statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 2, 4, and 5 to comply with the drafting and format requirements of KRS Chapter 13A; (4) to amend Section 3(3) to specify that the clerk shall prepare a pdf-formatted copy of the original, blank absentee ballot; (5) to amend Section 1(5) to specify that the term, "registered voter," included dependents of a member of the military; and (6) to amend Section 2 to clarify that the application for voter registration or an absentee ballot shall be valid for all elections that occur after the application is received until the next general election. Without objection, and with agreement of the agency, the amendments were approved.

FINANCE AND ADMINISTRATION CABINET: Kentucky Retirement Systems: General Rules

105 KAR 1:370. Kentucky Retirement Systems Personnel Policies. Jennifer A. Jones, assistant general counsel, and Schuyler Olt, general counsel, represented the systems.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct statutory citations; and (2) to amend Section 1 to clarify to whom the personnel policies shall apply. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Board of Medical Licensure: Board

201 KAR 9:006. Repeal of 201 KAR 9:005. Lloyd Vest, general counsel, represented the board.

In response to a question by Senator Givens, Mr. Vest stated that 201 KAR 9:005 was being repealed because it was redundant. The statute already required compliance with American Medical Association standards, which included ethics standards for physicians.

Kentucky Real Estate Appraisers Board: Board

201 KAR 30:040. Standards of Practice. Larry Disney, executive director, and Jim Grawe, assistant attorney general, represented the board.

In response to a question by Representative Ford, Mr. Disney stated that this administrative regulation adopted the most recent uniform appraisal standards, which did not change substantively.

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

301 KAR 1:201. Recreational fishing limits. Gerard L. Buynak, assistant director, and Catherine York, deputy general counsel,

represented the department.

GENERAL GOVERNMENT CABINET: Department of Agriculture: Office of Consumer and Environmental Protection: Division of Environmental Services: Structural Pest Control

302 KAR 29:010. Definitions for 302 KAR Chapter 29. Steve Sims, Structural Branch manager, and Clint Quarles, staff attorney, represented the division.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting and format requirements of KRS Chapter 13A and to insert a citation. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: (1) to amend Sections 7 and 11 to comply with the drafting and format requirements of KRS Chapter 13A; and (2) to amend Section 14 to incorporate by reference the consumer disclosure form. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 29:060. Certification.

In response to questions by Senator Givens, Mr. Sims stated that the amendments were expected to simplify the licensing process. The continuing education requirements were also changing to require more credit hours for certain licensees. Currently, the agency offered continuing education six (6) times per year, but was considering offering additional classes soon.

ENERGY AND ENVIRONMENT CABINET: Department for Natural Resources: Division of Mine Permits: Permits

405 KAR 8:010 & E. General provisions for permits. Mike Haines, general counsel; Allen Luttrell, director; and Michael Mullins, administrative regulation coordinator, represented the division. David Gooch, Coal Operators and Associates president, appeared in support of this administrative regulation.

In response to questions by Representative Ford, Mr. Luttrell stated that as a result of this administrative regulation, nineteen (19) new regulators had been hired. \$89,000 had been recovered for permit fees.

In response to questions by Co-Chair Combs, Mr. Luttrell stated that 2010 House Bill (HB) 283, which raised fee limits, was drafted and passed on behalf of and after requests from the coal mining industry. HB 283 directly prompted the fee increases in this administrative regulation in order to improve the speed of permit processing. At the peak of the backlog, the division reported 185 delinquent permit processing requests outstanding. Since the emergency administrative regulation had been in effect, permit processing had steadily improved, and there were currently approximately eighty-five (85) delinquent permit processing requests outstanding. Slurry and other impoundment permit processing was time consuming because review consisted of two (2) federal oversight programs designed to minimize risk to workers' safety and structural failure. The 2001 Martin County coal slurry disaster was cited as an example of the importance of thorough permit review. In 2009 the division processed fifteen (15) impoundment permits. Since the emergency administrative regulation had been in effect, the division had processed thirty (30) impoundment permits.

Co-Chair Combs stated that industry requests for this fee increase were for the purpose of improving timely permit processing. House Bill 283 had been enacted by the General Assembly to help the coal mining industry. Co-Chair Combs requested that the division continue to improve timely permit processing without risking safety.

Mr. Gooch stated that the division's review and enforcement regarding this administrative regulation was currently adequate. The division worked closely with the coal mining industry to facilitate this administrative regulation, and the industry was pleased with the cooperation of state government.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correction citations; and (2) to amend

Sections 2 through 6, 8, 9, 11, 12, 13, and 15 through 26 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

JUSTICE AND PUBLIC SAFETY CABINET: Kentucky Law Enforcement Council: Council

503 KAR 1:110 & E. Department of Criminal Justice Training basic training: graduation requirements; reports. Steve Lynn, assistant general counsel, represented the council.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 3, and 5 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department of Criminal Justice Training: General Training Provision

503 KAR 3:010. Basic law enforcement training course recruit conduct requirements; procedures and penalties.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to specify that the criminal history check must be conducted in the ninety (90) days before the recruit attends basic training; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 2 and 6 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

503 KAR 3:040. Telecommunications academy trainee requirements; misconduct; penalties; discipline procedures.

In response to a question by Senator Givens, Mr. Lynn stated that this administrative regulation required good hygiene and prohibited excessive perfume and cologne because the academy space was very limited and there had been numerous complaints.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to specify that the criminal history check shall be conducted in the ninety (90) days before the trainee attends the academy; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1, 3, 4, 6, and 10 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

503 KAR 3:110. Certified Court Security Officers academy trainee requirements; misconduct; penalties; discipline procedures.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to specify that the criminal history check shall be conducted in the ninety (90) days before the trainee attends the academy; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1, 3, 4, and 6 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

TRANSPORTATION CABINET: Office of Audits: Division of Road Fund Audits: Division of Motor Carriers

601 KAR 1:201. Recordkeeping and audit requirements of taxes imposed in KRS 138.655 through 138.7291. Ann D'Angelo, assistant general counsel, and Randall Royer, road fund audit director, represented the division.

Senator Pendleton stated that requirements on the Division of Motor Carriers Web site had not been updated since April of 2009 and citations had been issued as a result of confusion regarding which standards were in effect. Ms. D'Angelo agreed to ensure that the Division's Web site was updated to current requirements.

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 Sections 3 and 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Department of Workforce Investment: Office of Employment and Training: Employment Services

787 KAR 2:020. Confidentiality of records of the Office of Employment and Training. Clay Lamb, staff attorney, and Jeff Gatewood, program lead, represented the office.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

LABOR CABINET: Department of Workplace Standards: Division of Occupational Safety and Health Compliance: Occupational Safety and Health

803 KAR 2:300. General. Kristi Redmon, Occupational Safety and Health standards specialist, represented the division.

In response to questions by Representative Damron, Ms. Redmon stated that these administrative regulations were not more stringent than federal requirements. The division could not simply reference the federal regulations because only certain standards were updated.

In response to questions by Representative Ford who agreed with Representative Damron that referencing the federal regulation would be a more efficient way of keeping the administrative regulations up-to-date with federal requirements, Ms. Redmon stated that these administrative regulations did not change compliance requirements for industry stakeholders.

A motion was made and seconded to approve the following amendment: to amend the RELATES TO paragraph to correct a citation. Without objection, and with agreement of the agency, the amendment was approved.

803 KAR 2:306. Occupational health and environmental controls.

A motion was made and seconded to approve the following amendment: to amend Section 3(6)(a) to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

803 KAR 2:308. Personal protective equipment.

803 KAR 2:316. Welding, cutting, and brazing.

803 KAR 2:320. Toxic and hazardous substances.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 3, and 5 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:425. Toxic and hazardous substances.

803 KAR 2:500. Maritime employment.

ENERGY AND ENVIRONMENT CABINET: Department for Natural Resources: Office of Mine Safety and Licensing: Miner Training, Education and Certification

805 KAR 7:020. Training and certification of inexperienced miners. Amy Denham, executive secretary; Johnny Greene, executive director; and Michael Mullins, administrative regulation coordinator, represented the office.

A motion was made and seconded to approve the following amendment: to amend Section 1(1) to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

Sanctions and Penalties

805 KAR 8:060. Criteria for the imposition and enforcement of

sanctions against licensed premises.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Department of Housing, Buildings and Construction: Division of Heating, Ventilation and Air Conditioning: Heating, Ventilation, and Air Conditioning Licensing Requirements

815 KAR 8:100. Criteria for local jurisdiction HVAC programs. Dawn M. Bellis, general counsel; Timothy R. House, acting director of HVAC and director of the Division of Plumbing; and Richard Moloney, commissioner, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS Chapter 13A.220; and (3) to amend Sections 1 through 11 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Division of Plumbing: Plumbing

815 KAR 20:020. Parts or materials list.

A motion was made and seconded to approve the following amendment: to amend Section 5(20)(h) to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Health Policy: State Health Plan

900 KAR 5:020. State Health Plan for facilities and services. Carrie Banahan, executive director, represented the office.

A motion was made and seconded to approve the following amendments: (1) to amend Section 2 to change the edition date of the material incorporated by reference and correct the agency name; and (2) to amend the material incorporated by reference to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Certificate of Need

900 KAR 6:020. Certificate of need application fees schedule.

A motion was made and seconded to approve the following amendments: 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.

Department for Aging and Independent Living: Division of Quality Living: Aging Services

910 KAR 1:240. Certification of assisted-living communities. Rebel Baker, branch manager; Shirley Eldridge, internal policy analyst III; and Phyllis Sosa, assistant director, represented the division.

In response to questions by Representative Damron, Ms. Sosa stated that the division worked with Representative Susan Westrom to draft this administrative regulation in compliance with 2010 House Bill 444, which Representative Susan Westrom sponsored. There was not opposition during the public hearing and public comment period.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Sections 1 and 8 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Other Business: Staff apprised Subcommittee members that staff assistant, Jennifer Beeler, would be transferring from the Adminis-

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trative Regulation Review Subcommittee to the Transportation Committee. Staff and Subcommittee members thanked Ms. Beeler for her service.

The following administrative regulations were deferred to the September 14, 2010, meeting of the Subcommittee:

GENERAL GOVERNMENT CABINET: Board of Veterinary Examiners: Board

201 KAR 16:030 & E. License, renewal notice, exemption.

TOURISM, ARTS AND HERITAGE CABINET: Office of the Secretary: Office

300 KAR 2:040. Kentucky Film Industry Incentives Application and Fees.

Department of Parks: Parks and Campgrounds

304 KAR 1:040. Campgrounds. Catherine York, deputy general counsel, and Sam Devine, customer service director, represented the department.

In response to questions by Representative Ford, Ms. York stated that this administrative regulation was necessary to clarify that joyriding in a nonlicensed motorized vehicle on a state campground was prohibited, except for those used by mobility-impaired persons. Mr. Devine stated that there had been near accidents and numerous complaints. Ms. York stated that this did not affect areas like the Daniel Boone National Forest because it was outside the jurisdiction of a state campground. A state campground consisted of an area within a state park where camping facilities were available and that is located after a post where a prospective camper paid for camping privileges.

In response to a question by Senator Pendleton, Ms. York stated that the intent of this administrative regulation was to allow entry and exit of nonlicensed motorized vehicles but to prohibit joyriding within the campground.

In response to questions by Co-Chair Tori, Ms. York stated that golf carts were included in the category of a nonlicensed motorized vehicle. Some campgrounds were too small to facilitate traffic from nonlicensed motorized vehicles. Those persons who did not qualify as mobility impaired but who had a statement from a physician indicating a mobility difficulty, temporary or permanent, would also qualify to use a nonlicensed motorized vehicle within a state campground.

Senator Pendleton requested that the agency further amend this administrative regulation to clarify what constituted joyriding, which vehicles were included in the category of nonlicensed motorized vehicles, and what options were available for golf cart usage.

Co-Chair Combs requested that the agency examine and consider eliminating redundancy with this administrative regulation and other existing laws.

A motion was made and seconded to defer this administrative regulation in order to amend it to clarify the agency's intent. Ms. York stated that the department would agree to defer this administrative regulation. Without objection, and with agreement of the agency, the motion was approved.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Kentucky Board of Education: Department of Education: School Administration and Finance

702 KAR 3:246. School council allocation formula: KETS District Administrative System Chart of Accounts.

Pupil Transportation

702 KAR 5:110. Vocational pupils, reimbursement for.

Office of Instruction

704 KAR 3:305. Minimum requirements for high school graduation.

PUBLIC PROTECTION CABINET: Kentucky Horse Racing Commission: Quarter Horse, Appaloosa and Arabian Racing

811 KAR 2:020 & E. Licensing quarter horse, appaloosa or arabian racing.

811 KAR 2:140 & E. Licensing of racing associations.

Department of Housing, Buildings and Construction: Division of Plumbing

815 KAR 20:100. Joints and connections. Dawn M. Bellis, general counsel; Timothy R. House, director of the Division of Plumbing; and Richard Moloney, commissioner, represented the division.

Mr. House stated that the department wanted to defer consideration of this administrative regulation. Without objection, upon request of the division, the administrative regulation was deferred to the September 14, 2010 meeting of the Subcommittee.

The subcommittee adjourned at 2 p.m. until September 14, 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 NATURAL RESOURCES
AND ENVIRONMENT
Meeting of August 5, 2010**

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the August 18, 2010 meeting, which are hereby incorporated by reference.

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Natural Resources and Environment for its meeting of August 5, 2010, having been referred to the Committee on July 7, 2010, pursuant to KRS 13A.290(6):

301 KAR 1:140
301 KAR 2:049
301 KAR 2:132
401 KAR 5:045
401 KAR 5:070
405 KAR 5:075
401 KAR 8:150
401 KAR 11:030
401 KAR 47:090

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the August 5, 2010 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE
(Meeting of August 18, 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 August 18, 2010, having been referred to the Committee on August 4, 2010, pursuant to KRS 13A.290(6):

201 KAR 20:510
900 KAR 6:060
902 KAR 20:400
921 KAR 1:410
921 KAR 2:530

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates

C - 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

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The KRS Index is a cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each administrative regulation submitted for publication in VOLUME 37 of the Administrative Register.

Technical Amendment Index

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The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the 2010 bound Volumes. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10) or 13A.312(2). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published in the Administrative Register. NOTE: Copies of the technically amended administrative regulations are available for viewing on the Legislative Research Commission Web site at <http://www.lrc.ky.gov/home.htm>.

Subject Index

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The Subject Index is a general index of administrative regulations published in VOLUME 37 of the Administrative Register, and is mainly broken down by agency.

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Regulation Number	36 Ky.R. Page No.	Effective Date	Regulation Number	36 Ky.R. Page No.	Effective Date
VOLUME 36					
The administrative regulations listed under VOLUME 36 are those administrative regulations that were originally published in Volume 36 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2010 bound Volumes were published.					
SYMBOL KEY:					
* Statement of Consideration not filed by deadline					
** 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			As Amended	1434	
Resubmitted	1860	1-4-10	31 KAR 6:010		
Withdrawn		7-19-10	Amended	2110-M	
201 KAR 16:030E			As Amended	2176	6-4-10
Resubmitted	2280	5-13-10	101 KAR 2:066		
401 KAR 8:010E			Amended	1963	
Resubmitted	2281	4-20-10	Withdrawn		7-19-10
503 KAR 1:140E	1871	1-5-10	102 KAR 1:160		
Replaced	2178	6-4-10	Amended	1966	
505 KAR 1:160E			As Amended	2177	6-4-10
Resubmitted	1180	11-13-09	102 KAR 1:225		
703 KAR 5:180E			Amended	1967	
Resubmitted	2020-M	1-15-10	Amended	2056-A	
810 KAR 1:025E			As Amended	2299	
Resubmitted	2158	3-26-10	Amended	2061-A	
Replaced		(See 37 Ky.R.)	As Amended	2302	6-4-10
810 KAR 1:037E	2165	3-17-10	200 KAR 5:314		
Replaced		(Replaced 37 Ky.R.)	Amended	1300	
810 KAR 1:100E			As Amended	2177	6-4-10
Resubmitted	2168	3-17-10	200 KAR 5:315		
Replaced		(See 37 Ky.R.)	Amended	616	
811 KAR 1:037E	2169	3-17-10	201 KAR 10:050		
Replaced		(See 37 Ky.R.)	Amended	1301	
811 KAR 1:070E			As Amended	2047-M	7-8-10
Resubmitted	2023-M	1-15-10	201 KAR 16:030		
811 KAR 1:230			Amended	2353	
Resubmitted	2172	3-17-10	201 KAR 20:240		
Replaced		(See 37 Ky.R.)	Amended	2071-A	6-16-10
811 KAR 2:130	2174	3-17-10	201 KAR 20:450		
815 KAR 20:050E			Amended	527	
Resubmitted	992	10-01-09	201 KAR 20:490		
Replaced	2067-M	6-4-10	Amended	2073-A	
906 KAR 1:180E			As Amended	2312	6-16-10
Resubmitted	1184	11-13-09	201 KAR 20:510	2402	(See 37 Ky.R.)
Replaced	2197	6-4-10	201 KAR 22:020		
921 KAR 2:530E			Amended	2208	
Resubmitted	2294	5-14-10	Withdrawn		6-15-10
Expired			201 KAR 22:045		(See 37 Ky.R.)
ORDINARY ADMINISTRATIVE REGULATIONS:					
11 KAR 5:145			Amended	2209	
Amended	1508		201 KAR 22:135		(See 37 Ky.R.)
11 KAR 12:060			Amended	2211	
Amended	2055-A	7-12-2010	201 KAR 30:050		
13 KAR 1:020			Amended	152	
Amended	2347	9-3-10	Amended	569	(See 37 Ky.R.)
31 KAR 3:010			301 KAR 1:140		
Amended	1095		Amended	2212	(See 37 Ky.R.)
			301 KAR 2:049		(See 37 Ky.R.)
			Amended	2215	(See 37 Ky.R.)
			301 KAR 2:132		
			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	8-5-10
			401 KAR 5:075		(See 37 Ky.R.)
			Amended	2119-M	
			Amended	2339	
			401 KAR 8:010		

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Regulation Number	35 Ky.R. Page No.	Effective Date	Regulation Number	35 Ky.R. Page No.	Effective Date
Amended			Withdrawn		6-15-10
401 KAR 8:020			781 KAR 1:020		
Amended	2088-A		Amended	2230	(See 37 Ky.R.)
As Amended	2321	6-3-10	781 KAR 1:030		
401 KAR 8:070			Amended	2232	(See 37 Ky.R.)
Amended	2092-A		781 KAR 1:040		
401 KAR 8:150		(See 37 Ky.R.)	Amended	2235	
Amended	2094-A		Withdrawn		6-15-10
401 KAR 8:200			803 KAR 30:010		(See 37 Ky.R.)
Amended	2097-A		Amended	2238	
As Amended	2323	6-3-10	804 KAR 11:030		
401 KAR 8:250			Amended	2112-A	
Amended	2099-A		Amended	2344	
As Amended	2324		Withdrawn		7-7-10
401 KAR 8:300			810 KAR 1:025		
Amended	2100-A		Amended	2244	(See 37 Ky.R.)
As Amended	2324	6-3-10	810 KAR 1:037	2261	(See 37 Ky.R.)
401 KAR 8:510			810 KAR 1:100	2264	(See 37 Ky.R.)
Amended	2101-A		811 KAR 1:037	2265	(See 37 Ky.R.)
As Amended	2324	6-3-10	811 KAR 1:070		
401 KAR 8:550			Amended	2127-M	6-4-10
Amended	2103-A		As Amended	2187	
As Amended	2325	6-3-10	811 KAR 1:230	2268	(See 37 Ky.R.)
401 KAR 11:010			811 KAR 2:130	2269	(See 37 Ky.R.)
Amended	2094		815 KAR 7:070		(See 37 Ky.R.)
401 KAR 11:030		(See 37 Ky.R.)	Amended	2251	
Amended	2105-A		815 KAR 8:070	2004	
401 KAR 47:090		(See 37 Ky.R.)	As Amended	2194	6-4-10
Amended	620		815 KAR 8:080	2006	
401 KAR 59:015			Amended	2048-A	
Amended	2355	(See 37 Ky.R.)	As Amended	2195	6-4-10
405 KAR 8:010			815 KAR 8:090	2008	
Amended	2360	(See 37 Ky.R.)	As Amended	2196	6-4-10
503 KAR 1:140			815 KAR 10:060		
Amended	1989		Reprint	1857	
As Amended	2178	6-4-10	815 KAR 20:018	2271	(See 37 Ky.R.)
503 KAR 3:010			815 KAR 20:050		
Amended	2373	(See 37 Ky.R.)	Amended	1134	
503 KAR 3:040			As Amended	2067-M	6-4-10
Amended	2379	(See 37 Ky.R.)	815 KAR 20:191		
503 KAR 3:110			Amended	2135-M	
Amended	2383	(See 37 Ky.R.)	As Amended	2327	(See 37 Ky.R.)
601 KAR 1:200		(See 37 Ky.R.)	815 KAR 2	5:080	
Amended	2220		Amended	2114-A	
601 KAR 1:220	1571		As Amended	2333	
Amended	2058-M		900 KAR 5:020		
As Amended	2184	6-4-10	Amended	2255	(See 37 Ky.R.)
601 KAR 2:020			900 KAR 6:020		
Amended	2388	(See 37 Ky.R.)	Amended	2256	(See 37 Ky.R.)
601 KAR 12:060			900 KAR 6:060		
Amended	1116		Amended	2258	(See 37 Ky.R.)
As Amended	2325	6-4-10	900 KAR 6:125	260	
603 KAR 4:045			902 KAR 20:400	1572	
Amended	2124-M		Amended	2049-A	(See 37 Ky.R.)
As Amended	2184		906 KAR 1:180	1403	
702 KAR 3:030			Amended	2103-M	
Amended	2108-A		As Amended	2197	6-4-10
As Amended	2326		910 KAR 1:240		
702 KAR 3:246			Amended	2391	(See 37 Ky.R.)
Amended	2225		910 KAR 1:260		
703 KAR 5:060			Amended	1997	
Amended	2109-A	(See 37 Ky.R.)	As Amended	2201	6-4-10
703 KAR 5:180	2144-M		921 KAR 1:410		
704 KAR 3:540	2260	(See 37 Ky.R.)	Amended	2395	(See 37 Ky.R.)
725 KAR 1:061					
Amended	2227				

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EMERGENCY ADMINISTRATIVE REGULATIONS:
(Note: Emergency regulations expire 180 days from the date

filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whi-

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chever occurs first.)			11 KAR 5:145		
31 KAR 4:130E	4	6-15-10	Amended	84	
31 KAR 4:140E	6	6-15-10	16 KAR 6:010		
101 KAR 5:015E	211	7-13-10	Amended	86	
Withdrawn		8-13-10	As Amended	678	
Resubmitted	664	8-13-10	16 KAR 6:030		
102 KAR 1:320E	212	7-15-10	Amended	89	
102 KAR 1:330E	215	7-15-10	As Amended	680	
105 KAR 1:190E	217	7-15-10	31 KAR 4:130		
201 KAR 8:007E	224	7-15-10	Amended	91	
201 KAR 8:390E	225	7-15-10	As Amended	680	
201 KAR 8:500E	228	7-15-10	31 KAR 4:140		
201 KAR 8:510E	231	7-15-10	Amended	94	
201 KAR 8:520E	233	7-15-10	As Amended	682	
201 KAR 8:530E	235	7-15-10	40 KAR 2:350		
201 KAR 8:540E	239	7-15-10	Amended	96	
201 KAR 8:560E	241	7-15-10	Amended	741	
201 KAR 8:570E	245	7-15-10	101 KAR 5:015	605	
201 KAR 8:580E	248	7-15-10	Withdrawn		8-13-10
201 KAR 39:050E	250	6-16-10	Resubmitted	879	
302 KAR 20:115E	252	7-2-10	102 KAR 1:320	606	
302 KAR 21:005E	254	7-2-10	102 KAR 1:330	609	
503 KAR 1:110E	9	6-10-10	103 KAR 3:020		
601 KAR 1:018E	666	8-12-10	Amended	755	
702 KAR 7:130E	255	6-23-10	103 KAR 3:050		
810 KAR 1:009E	13	6-15-10	Amended	760	
815 KAR 1:025E		(See 36 Ky.R.)	103 KAR 18:070		
Replaced	363	9-3-10	Amended	409	
810 KAR 1:026E	18	6-15-10	103 KAR 31:102	611	
810 KAR 1:037E		(See 36 Ky.R.)	105 KAR 1:190		
Replaced	369	9-3-10	Amended	410	
810 KAR 1:100E		(See 36 Ky.R.)	105 KAR 1:370		
Replaced	371	9-3-10	Amended	99	
811 KAR 1:037E		(See 36 Ky.R.)	As Amended	683	
Replaced	372	9-3-10	106 KAR 2:020		
811 KAR 1:230		(See 36 Ky.R.)	Amended	417	
Replaced	372	9-3-10	109 KAR 15:020		
811 KAR 2:020E	22	6-15-10	Amended	767	
811 KAR 2:130E		(See 36 Ky.R.)	201 KAR 2:330	612	
Replaced	374	9-3-10	201 KAR 8:500	614	
811 KAR 2:140E	30	6-15-10	201 KAR 8:510	616	
902 KAR 30:001	257	7-15-10	201 KAR 8:520	618	
902 KAR 30:110	260	7-15-10	201 KAR 8:530	620	
902 KAR 30:120	265	7-15-10	201 KAR 8:540	624	
902 KAR 30:130	274	7-15-10	201 KAR 8:560	626	
902 KAR 30:150	279	7-15-10	201 KAR 8:570	630	
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902 KAR 30:180	286	7-15-10	201 KAR 9:006(r)	194	
902 KAR 30:200	289	7-15-10	201 KAR 18:150		
907 KAR 1:012E	295	7-1-10	Amended	768	
907 KAR 1:014E	298	7-1-10	201 KAR 20:056		
907 KAR 1:015E	302	7-1-10	Amended	419	
907 KAR 1:019E	305	7-1-10	201 KAR 20:057		
907 KAR 1:479E	312	7-1-10	Amended	421	
907 KAR 1:677E	318	7-1-10	201 KAR 20:061	635	
907 KAR 1:825E	323	7-1-10	201 KAR 20:062	637	
907 KAR 3:090E	333	7-1-10	201 KAR 20:070		
907 KAR 3:100E	348	7-1-10	Amended	423	
907 KAR 5:005E	352	7-1-10	201 KAR 20:110		
921 KAR 2:040E	672	7-23-10	Amended	426	
921 KAR 3:030E	674	7-23-10	201 KAR 20:162		
			Amended	428	
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			201 KAR 20:225		
			Amended	429	
			201 KAR 20:230		
			Amended	431	
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			Amended	432	
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11 KAR 3:100					
Amended	71				

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Amended	434		Amended	118	
201 KAR 20:411			302 KAR 34:020		
Amended	436		Amended	800	
201 KAR 20:470			304 KAR 1:040		
Amended	438		Amended	121	
201 KAR 20:510		(See 36 Ky.R.)	Withdrawn		8-18-10
As Amended	357	8-18-10	307 KAR 1:060	643	
201 KAR 22:020			401 KAR 5:045		(See 36 Ky.R.)
Amended	775		As Amended	44	8-5-10
201 KAR 22:045		(See 36 Ky.R.)	401 KAR 5:075		(See 36 Ky.R.)
As Amended	34	7-21-10	As Amended	45	8-5-10
201 KAR 22:053			401 KAR 8:100		
Amended	776		Amended	123	
201 KAR 22:135		(See 36 Ky.R.)	401 KAR 8:150		(See 36 Ky.R.)
As Amended	35	7-21-10	As Amended	50	8-5-10
201 KAR 22:070			401 KAR 11:030		(See 36 Ky.R.)
Amended	779		As Amended	51	8-5-10
201 KAR 30:040			401 KAR 47:090		(See 36 Ky.R.)
Amended	101		As Amended	53	8-5-10
201 KAR 34:020			401 KAR 51:001		
Amended	443		Amended	452	
201 KAR 36:060			401 KAR 52:001		
Amended	780		Amended	469	
201 KAR 36:070			401 KAR 59:015		(See 36 Ky.R.)
Amended	783		Amended	748	
201 KAR 39:050			405 KAR 8:010		(See 36 Ky.R.)
Amended	444		Amended	390	
201 KAR 40:040			As Amended	689	
Amended	784		500 KAR 2:020		
201 KAR 40:050			Amended	474	
Amended	786		500 KAR 3:020		
201 KAR 40:060			Amended	478	
Amended	787		502 KAR 32:010		
201 KAR 40:070			Amended	482	
Amended	789		503 KAR 1:110		(See 36 Ky.R.)
201 KAR 40:080			Amended	127	
Amended	791		As Amended	702	
201 KAR 40:100			503 KAR 1:170		
Amended	794		Amended	801	
201 KAR 42:040			503 KAR 3:010		(See 36 Ky.R.)
Amended	796		As Amended	705	
300 KAR 2:040	195		503 KAR 3:040		(See 36 Ky.R.)
301 KAR 1:010			As Amended	709	
Amended	446		503 KAR 3:110		(See 36 Ky.R.)
301 KAR 1:140		(See 36 Ky.R.)	As Amended	713	
As Amended	35	8-5-10	601 KAR 1:018		
301 KAR 1:201			Amended	808	
Amended	102		601 KAR 1:200		(See 36 Ky.R.)
301 KAR 1:410			As Amended	56	8-6-10
Amended	107		601 KAR 1:201		
Amended	744		Amended	131	
301 KAR 2:049		(See 36 Ky.R.)	As Amended	717	
As Amended	37	8-5-10	601 KAR 2:020		(See 36 Ky.R.)
301 KAR 2:132		(See 36 Ky.R.)	As Amended	357	8-10-10
As Amended	41	8-5-10	601 KAR 9:015		
301 KAR 2:251			Amended	484	
Amended	797		601 KAR 14:030	645	
302 KAR 20:020			702 KAR 5:110		
Amended	448		Amended	135	
302 KAR 20:050			702 KAR 7:130		
Amended	450		Amended	485	
302 KAR 20:115			703 KAR 5:060		(See 36 Ky.R.)
Amendment	451		As Amended	359	
302 KAR 21:005	642		704 KAR 3:540		(See 36 Ky.R.)
302 KAR 29:010			As Amended	60	7-12-10
Amended	112		704 KAR 3:303		
As Amended	684		Amended	137	
302 KAR 29:050			Withdrawn	*	8-15-10
Amended	114		704 KAR 3:305		
As Amended	686		Amended	138	
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Amended	487		810 KAR 1:001		
781 KAR 1:020		(See 36 Ky.R.)	Amended	825	
As Amended	360	9-3-10	810 KAR 1:009		
781 KAR 1:030		(See 36 Ky.R.)	Amended	169	
As Amended	362	9-3-10	810 KAR 1:011		
781 KAR 1:040			Amended		
Amended	489		810 KAR 1:025	363	9-3-10
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SYMBOL KEY:

* Statement of Consideration not filed by deadline

** Withdrawn, not in effect within 1 year of publication

*** Withdrawn before being printed in Register

(r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the 2010 bound Volumes. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10) or 13A.312(2). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published in the Administrative Register. NOTE: Finalized copies of the technically amended administrative regulations are available for viewing on the Legislative Research Commission Web site at <http://www.lrc.ky.gov/home.htm>.

The Board of Nursing has requested that technical amendments be made to reflect the statutory change of the term "Advance Registered Nurse Practitioner" or "ARNP" to "Advance Practice Registered Nurse" or "APRN". This change was applied to 201 KAR 20:059, 201 KAR 20:161, 201 KAR 20:163, 201 KAR 20:215, 201 KAR 20:220, 201 KAR 20:235, 201 KAR 20:400, 201 KAR 20:410, 201 KAR 20:450, and 201 KAR 20:490, as of July 15, 2010.

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