ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

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MEETING NOTICE: ARRS

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet July 12, 2011 at 1:00 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages **1-3** of this Administrative Register.

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

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

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TENTATIVE AGENDA, JULY 12, 2011, at 1:00 p.m., Room 149 Capitol Annex

PERSONNEL CABINET

Classified

101 KAR 2:095 & E. Classified service administrative regulations. ("E" expires 9/27/2011) (Deferred from June)
101 KAR 2:102 & E. Classified leave administrative regulations. ("E" expires 9/27/2011) (Deferred from June)

Unclassified

101 KAR 3:015 & E. Leave administrative regulations for the unclassified service. ("E" expires 9/27/2011) (Deferred from June)

GENERAL GOVERNMENT CABINET

Board of Auctioneers

Board

201 KAR 3:045. Recordkeeping and accounting.
201 KAR 3:081. Repeal of 201 KAR 3:015 and 3:080.
201 KAR 3:090. Administrative fees for applications and services.

Board of Dentistry

Board

201 KAR 8:008E. Repeal of 201 KAR 8:390. ("E" expires 10/18/2011)
201 KAR 8:532 & E. Licensure of dentists. ("E" expires 10/18/2011)
201 KAR 8:562 & E. Licensure of dental hygienists. ("E" expires 10/18/2011)

Board of Nursing

Board

201 KAR 20:056. Advanced practice registered nurse licensure, program requirements, recognition of a national certifying organization.
201 KAR 20:062. Standards for advanced practice registered nurse (APRN) programs of nursing.
201 KAR 20:070. Licensure by examination.
201 KAR 20:110. Licensure by endorsement.
201 KAR 20:215. Continuing competency requirements.
201 KAR 20:225. Reinstatement of license.
201 KAR 20:240. Fees for applications and for services.
201 KAR 20:310. Faculty for prelicensure registered nurse and practical nurse programs.
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.

Board of Interpreters for the Deaf and Hard of Hearing

Board

201 KAR 39:010. Definitions. (Deferred from May)
201 KAR 39:030. Application; qualifications for licensure; and certification levels. (Deferred from May)
201 KAR 39:040. Fees. (Deferred from May)
201 KAR 39:050. Renewal of licenses and extension of temporary licenses. (Deferred from May)
201 KAR 39:060. Reinstatement of license subject to disciplinary action. (Deferred from May)
201 KAR 39:070. Application and qualifications for temporary licensure. (Deferred from May)
201 KAR 39:080. Reciprocity. (Deferred from May)
201 KAR 39:090. Continuing education requirements. (Deferred from May)
201 KAR 39:100. Complaint procedure. (Deferred from May)
201 KAR 39:120. Code of ethics. (Deferred from May)

Kentucky Applied Behavior Analysis Licensing Board

Board

201 KAR 43:010 & E. Licensed behavior analyst or licensed assistant behavior analyst: application procedures. ("E" expires 10/26/2011)
201 KAR 43:020 & E. Temporary licensed behavior analyst or temporary licensed assistant behavior analyst: application procedures. ("E" expires 10/26/2011)
201 KAR 43:030 & E. Fees. ("E" expires 10/26/2011)
201 KAR 43:040 & E. Code of ethical standards and standards of practice. ("E" expires 10/26/2011)

TOURISM, ARTS AND HERITAGE CABINET

Department of Fish and Wildlife Resources

Fish

301 KAR 1:152. Asian carp harvest program. (Not Amended After Comments)

Game

301 KAR 2:095. Importation of cervid carcasses and parts. (Not Amended After Comments)

ENERGY AND ENVIRONMENT CABINET

Office of the Secretary

Kentucky State Nature Preserves Commission

Commission

400 KAR 2:090. Management, use, and protection of nature preserves.

Department for Environmental Protection

Division of Water

Public Water Supply

401 KAR 8:020. Public and semipublic water systems; general provisions.

Division of Air Quality

Attainment and Maintenance of the National Ambient Air Quality Standards

401 KAR 51:052 & E. Review of new sources in or impacting upon nonattainment areas. ("E" expires 10/13/2011) (Amended after Comments)

JUSTICE AND PUBLIC SAFETY CABINET
Office of the Secretary

Breath Analysis Operators
500 KAR 8:010. Certification of breath alcohol analysis instrument operators.

Department of Corrections

Class D and Class C Felons
501 KAR 2:020. Definitions for 501 KAR Chapter 2.
501 KAR 2:040. Waivers.
501 KAR 2:050. Transfer requests.
501 KAR 2:060. Procedures for housing of Class D and Class C felons.
501 KAR 2:070. Work release.

Jail Standards for Full Service Facilities
501 KAR 3:010. Definitions for 501 KAR Chapter 3.
501 KAR 3:020. Admission; management.
501 KAR 3:030. Fiscal management.
501 KAR 3:050. Physical plant.
501 KAR 3:060. Security; control.
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501 KAR 3:120. Admission; searches and release.
501 KAR 3:130. Prison programs; services.
501 KAR 3:140. Prisoner rights.
501 KAR 3:150. Hearings, procedures, disposition.
501 KAR 3:160. Training.
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Jail Standards for Restricted Custody Center Facilities
501 KAR 7:010. Definitions for 501 KAR Chapter 7.
501 KAR 7:020. Administration; management.
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501 KAR 7:040. Personnel.
501 KAR 7:050. Physical plant.
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501 KAR 7:120. Admission; searches and release.
501 KAR 7:130. Prisoner programs; services.
501 KAR 7:140. Prisoner rights.
501 KAR 7:150. Training.

Jail Standards for Life Safety Facilities
501 KAR 13:010. Life safety issues

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department of Workforce Investment
Office of Employment and Training

Unemployment Insurance
787 KAR 1:070. Reasonable time for protesting claim.
787 KAR 1:090. Unemployed worker's reporting requirements.
787 KAR 1:210. Employer contribution rates.

PUBLIC PROTECTION CABINET
Department of Insurance
Financial Standards and Examination Division

Authorization of Insurers and General Requirements
806 KAR 3:170. Annual audited financial reports. (Amended After Comments)

Health and Life Division

Trade Practices and Fraud
806 KAR 12:120. Suitability in annuity transactions. (Amended After Comments)

Department of Housing, Buildings and Construction
Division of Fire Prevention

Standards of Safety
815 KAR 10:070 & E. Consumer fireworks retailer registration and fees. ("E" expires 11/6/2011)

Electrical Inspectors
815 KAR 35:060. Licensing of electrical contractors, electricians, and master electricians pursuant to KRS 227A.060.
815 KAR 35:100. Electrical continuing education procedure.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy

State Health Plan
900 KAR 5:020 & E. State health plan for facilities and services. ("E" expires 11/2/2011)

Department for Public Health
Division of Administration and Financial Management

Local Health Departments

902 KAR 8:160. Local health department operations requirements.
902 KAR 8:165. Local health department accounting/auditing requirements.
902 KAR 8:170. Local health department financial management requirements.

Department for Community Based Services
Division of Protection and Permanency

Child Welfare

922 KAR 1:420 & E. Child fatality or near fatality investigations. ("E" expires 7/2/2011) (Deferred from March)

REGULATIONS COMING OFF JULY 2011 AGENDA

ENERGY AND ENVIRONMENT CABINET
Department of Environmental Protection
Division of Waste Management

Underground Storage Tanks

401 KAR 42:005. Definitions related to 401 KAR Chapter 42. (Comments Received, SOC ext.)
401 KAR 42:011. Scope of underground storage tank program. (Comments Received, SOC ext.)
401 KAR 42:020. UST systems: design, construction, installation, and registration. (Comments Received, SOC ext.)
401 KAR 42:030. UST system general operating requirements. (Comments Received, SOC ext.)
401 KAR 42:040. UST system release detection. (Comments Received, SOC ext.)
401 KAR 42:045. Delivery prohibition. (Comments Received, SOC ext.)
401 KAR 42:050. UST system release reporting, investigation, and confirmation. (Comments Received, SOC ext.)
401 KAR 42:060. UST system release response and corrective action for UST systems containing petroleum or hazardous substances. (Comments Received, SOC ext.)
401 KAR 42:070. Out-of-service UST systems, temporary closure and permanent closure of UST systems, and change in service of UST systems. (Comments Received, SOC ext.)
401 KAR 42:080. Classification of UST systems containing petroleum and listing of associated cleanup levels. (Comments Received, SOC ext.)
401 KAR 42:090. Financial responsibility. (Comments Received, SOC ext.)
401 KAR 42:095. Lender liability. (Comments Received, SOC ext.)
401 KAR 42:200. Annual fee for underground storage tanks. (Comments Received, SOC ext.)
401 KAR 42:250. Petroleum storage tank environmental assurance fund reimbursement procedures. (Comments Received, SOC ext.)
401 KAR 42:290. Ranking system. (Comments Received, SOC ext.)
401 KAR 42:300. Third-party claims. (Comments Received, SOC ext.)
401 KAR 42:315. Repeal of 401 KAR 42:314. (Comments Received, SOC ext.)
401 KAR 42:316. Petroleum storage tank environmental assurance fund eligibility criteria for contracting companies and partnerships. (Comments Received, SOC ext.)
401 KAR 42:320. Hearings. (Comments Received, SOC ext.)
401 KAR 42:330. Small owners tank removal account. (Comments Received, SOC ext.)
401 KAR 42:335. Financial audits. (Comments Received, SOC ext.)
401 KAR 42:340. Laboratory certification. (Comments Received, SOC ext.)

Solid Waste Facilities

401 KAR 47:205. Contents of the application for petroleum contaminated soil treatment facilities. (Comments Received, SOC ext.)
401 KAR 47:207. Public information procedures for petroleum contaminated soil treatment facilities. (Comments Received, SOC ext.)

Standards for Solid Waste Facilities

401 KAR 48:205. Technical requirements for petroleum contaminated soil treatment facilities. (Comments Received, SOC ext.)
401 KAR 48:206. Petroleum contaminated soil treatment facility liner soil layer quality assurance and quality control. (Comments Received, SOC ext.)
401 KAR 48:207. Petroleum contaminated soil treatment facility liner geosynthetic quality assurance and quality control. (Comments Received, SOC ext.)
401 KAR 48:208. Petroleum contaminated soil treatment facility liner high-permeability layer quality assurance and quality control. (Comments Received, SOC ext.)

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections

Jail Standards for Full Service Facilities

501 KAR 3:040. Personnel. (Comments Received)

TRANSPORTATION CABINET
Department of Highways
Division of Maintenance

Right-of-Way

603 KAR 4:035. Logo signs; placement along fully controlled and partially controlled access highways. (Comments Received, SOC ext.)

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.

REPRINTS

811 KAR 1:005 and 811 KAR 2:010 were printed in the June 2011 *Administrative Register of Kentucky* on pages 2860 and 2872 respectively. In that publication, both administrative regulations were missing the definitions found in Section 1(2) and (3). For clarification purposes, both administrative regulations are being reprinted in their entirety.

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, May 10, 2011)

811 KAR 1:005. Definitions.

RELATES TO: KRS Chapter 230 [~~230.210, 230.215, 230.260(1)~~]

STATUTORY AUTHORITY: KRS 230.215, **230.225(5)[**~~230.225(7)~~**]**, 230.260, **230.361(1),** 230.370**[**~~230.215(2), 230.260(3)~~**]**

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 mutuel 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) "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.~~]

(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 **if[**~~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.

(9)[~~(10)~~**]** "Bleeder list" means a tabulation of all bleeders to be maintained by the commission[~~Authority~~].

(10)[~~(11)~~**]** "Breakage" means the net pool minus payout.

(11)[~~(12)~~**]** "Breeder" means the owner of the dam of a horse **when[**~~at the time~~**]** the horse was conceived.

(12)[~~(13)~~**]** "Calendar days" means consecutive days counted irrespective of number of racing days.

(13)[~~(14)~~**]** "Carryover" means nondistributed pool monies which are retained and added to a corresponding pool in accordance with 811 KAR Chapter 1.

(14)[~~(15)~~**]**[~~(14)~~] "Claiming race" means a race in which ownership of a horse participating in the race may be transferred in conformity with **811 KAR Chapter 1[**~~these administrative regulations~~**][**~~811 KAR 1:035~~**]**.

(15)[~~(16)~~**]**[~~(15)~~] "Classified race" means a race in which entries are selected by the racing secretary on the basis of ability or past performance.

(16)[~~(17)~~**]**[~~(16)~~] "Coggins test" means a medical procedure used to determine if a horse is positive for Equine Infectious Anemia.

(17)[~~(18)~~**]** "Commission" means**:**

(a) The Kentucky Horse Racing Commission (formerly known as the Kentucky Horse Racing Authority and defined in KRS 230.210(2)) **if[**~~when~~**]** used in the context of the administrative agency governing horse racing and pari-mutuel wagering**; and**

(b) If[~~. When~~**]** used in the context of pari-mutuel wagering, **[**~~it means~~**]** the amount an association is authorized to withhold form a pari-mutuel wager pursuant to KRS 230.750.

(18)[~~(19)~~**]**[~~(17)~~] "Conditioned race" means an overnight race in which eligibility is determined according to specified conditions, which may include the following:

(a) Age;

(b) Sex;

(c) Earnings;

(d) Number of starts; or

(e) Positions of finishes.

(19)[~~(20)~~**]**[~~(18)~~] "Conditions" means qualifications that determine a horse's eligibility to be entered in a race.

(20)[~~(21)~~**]**[~~(19)~~] "Coupled entry" means two (2) or more horses in a race that are treated as a single betting interest for pari-mutuel wagering purposes [~~(also see "entry")~~].

(21)[~~(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 **starts[**~~shall start~~**]** in all dashes with positions drawn for each dash and the number of purse distributions or payouts awarded **does[**~~shall not~~**]** exceed the number of starters in the dash.

(22)[~~(23)~~**]**[~~(21)~~] "Day" means a twenty-four (24) hour period beginning at 12:01 a.m. and ending at midnight [~~(also known as a calendar day)~~].

(23)[~~(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.

(24)[~~(25)~~**]**[~~(23)~~] "Declaration" means the naming of a particular horse as a starter in a particular race.

(25)[~~(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.

(26)[~~(27)~~**]**[~~(24)~~] "Disqualification" means that [~~a~~]:

(a) An individual **is not** [~~Person~~]**[**~~shall not be~~**]** allowed to start or drive a horse in a race; or

(b) A horse **is not[**~~shall not be~~**]** allowed to start in a race.

(27)[~~(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~~**]**.

(28)[~~(29)~~**]**[~~(26)~~] "Driver" means a person who is licensed to drive a horse in a race.

(29)[~~(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.

(30)[~~(31)~~**]**[~~(28)~~] "Electronic ability" means a computer-generated eligibility certificate that records a horse's racing statistics.

(31)[~~(32)~~**]**[~~(29)~~] "Elimination heat" means an individual heat of a

race in which the contestants **[**~~shall~~**]** qualify for a final heat.

(32)[~~(33)~~**]**[~~(30)~~] "Entry" means the act of nominating a horse for a race.

(33)[~~(34)~~**]**[~~(31)~~] "Exhibition race" means a race on which no pari-mutuel wagering is permitted.

(34)[~~(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.

(35)[~~(36)~~**]**[~~(32)~~] "Extended pari-mutuel meeting" means a meeting or series of **meetings[**~~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.

(36)[~~(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~~].

(37)[~~(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~~].

(38)[~~(39)~~**]** "Futurity" means a stake in which the dam of the competing animal is nominated either when in foal or during the year of foaling.

(39)[~~(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.

(40)[~~(41)~~**]**[~~(36)~~] "Handle" means the aggregate of all pari-mutuel pools, excluding refundable wagers.

(41)[~~(42)~~**]** "Historical horse race" means any horse race that**:**

(a) Was previously run at a licensed pari-mutuel facility located in the United States**;**

(b)[~~and that~~**]** Concluded with official results**; and**

(c)[~~. An historical horse race must have~~**]** Concluded without scratches, disqualifications, or dead-heat finishes.

(42)[~~(43)~~**]**[~~(37)~~] "Horse" means any equine (including and designated as a mare, filly, stallion, colt, ridgeling, or gelding) registered for racing.

(43)[~~(44)~~**]**[~~(38)~~] "In harness" means that **[**~~that~~**]** the performance **will[**~~shall~~**]** be to a sulky.

(44)[~~(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.

(45)[~~(46)~~**]**[~~(39)~~] "Inquiry" means an investigation by the judges of a contest prior to declaring the result of the contest official.

(46)[~~(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.

(47)[~~(48)~~**]**[~~(41)~~] "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.

(48)[~~(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.

(49)[~~(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~~].

(50)[~~(51)~~**]**[~~(43)~~] "Maiden" means a horse that has never won a heat or race at the gate at which it was entered, and for which a purse is offered.

(51)[~~(52)~~**]**[~~(44)~~] "Maiden race" means a race restricted to maidens.

(52)[~~(53)~~**]**[~~(45)~~] "Match race" means a race between two (2) [~~or more~~] horses under conditions agreed upon between the contestants.

(53)[~~(54)~~**]**[~~(46)~~] "Matinee race" means a race in which no entrance fee is charged and in which the payouts, if any, are not money.

(54)[~~(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.

(55)[~~(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.

(56)[~~(57)~~**]**[~~(48)~~] "Month" means a calendar month.

(57)[~~(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~~].

(58)[~~(59)~~**]**[~~(50)~~] "Nomination" means the naming of a horse to a certain race or series of races, generally accompanied by payment of a prescribed fee.

(59)[~~(60)~~**]**[~~(51)~~] "Objection" means a verbal claim of foul in a race lodged by the horses driver, trainer, or owner before the race is declared official.

(60)[~~(61)~~**]**[~~(52)~~] "Official order of finish" means the order of finish of the horses in a contest as declared official by the judges.

(61)[~~(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.

(62)[~~(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.

(63)[~~(64)~~**]**[~~(55)~~] "Overnight race" means a contest for which entries close at a time set by the commission [~~Authority~~].

(64)[~~(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.

(65)[~~(66)~~**]** "Patron" means an individual present at a track or a simulcast facility who observes or wagers on a live or historical horse race.

(66)[~~(67)~~**]** "Payout" means the amount of the net pool payable to an individual patron on his or her winning wager.[~~(56) "Pari-mutuel wagering" means a systems 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.~~]

(67)[~~(68)~~**]**[~~(57) "Payoff" or "payout" means the amount of money payable to winning wagers.~~

~~(58)~~] "Post position" means the preassigned position from which a horse will leave the starting gate.

(68)[~~(69)~~**]**[~~(59)~~] "Post time" means the scheduled starting time for a race.

(69)[~~(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, **would[**~~shall~~**]** exclude that horse or driver from racing.

(70)[~~(71)~~**]**[~~(61)~~] "Purse" means the total cash awarded as a prize in a race.

(71)[~~(72)~~**]** "Race day" means any period of twenty-four (24) hours beginning at 12:01 a.m. and ending at midnight **in[**~~on~~**]** which live racing is conducted by an association.

(72)[~~(73)~~**]** "Result" means the part of the official order of finish in a race used to determine the pari-mutuel payoff of pools.

(73)[~~(74)~~**]**[~~(62)~~] "Scratch" means the act of withdrawing an entered horse from a race after the closing of entries.

(74)[~~(75)~~][~~(63)~~] "Scratch time" means the deadline set for withdrawal of entries from a scheduled race.

(75)[~~(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.

(76)[~~(77)~~][~~(64)~~] "Simulcasting" is defined by KRS 230.210(11).

(77)[~~(78)~~][~~(65)~~] "Single price pool" means an equal distribution of profit to winning betting interests or winning betting combinations through a single payout price.

(78)[~~(79)~~] "Specimen" means a sample of blood, urine, or other biologic sample taken or drawn from a horse for chemical testing.

(79)[~~(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.

(80)[~~(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.

(81)[~~(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.

(82)[~~(83)~~][~~(69)~~] "Sulky" means a dual-wheel racing vehicle with dual shafts not exceeding the height of the horse's withers.

(83)[~~(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

(84)[~~(85)~~] "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.

(85)[~~(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 **the**[~~such~~] wagers, and records, displays, and stores pari-mutuel wagering information.

(86)[~~(87)~~][~~(71) "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~~].

(87)[~~(88)~~][~~(73)~~] "USTA" means the United States Trotting Association.

(88)[~~(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.

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

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, May 10, 2011)

811 KAR 2:010. Definitions.

RELATES TO: KRS Chapter 230[~~230.610-230.770~~]

STATUTORY AUTHORITY: KRS 230.215, 230.225**(5)**[~~(7)~~], 230.260, **230.361(1),** 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 meaning:~~] (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) "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.~~]

(2) "Age" **means the number of years since a horse was foaled, reckoned as if the horse was foaled on January 1** 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 **or[**~~and/or~~**]** winnings as stipulated in the conditions **of the race[**~~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[~~/or~~] 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 [~~lodged~~] 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)[~~(12)~~] "Breeder" **means the owner of the dam of a horse when serviced[**~~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)[~~(13)~~] "Claiming race" means any race in which every horse running **in the race[**~~therein~~**]** may be transferred in conformity

with **811 KAR Chapter 2[**~~these rules~~**]**.

(17)[~~(14)~~] "Closing" means **the** time published by the association after which entries for a race will not be accepted.

(18)[~~(15)~~] "Commission" means**:**

(a) The Kentucky Horse Racing Commission (formerly known as the Kentucky Horse Racing Authority and defined in KRS 230.210(2)) **if[**~~when~~**]** used in the context of the administrative agency governing horse racing and pari-mutuel wagering; **and**

(b) If[~~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)[~~(16)~~] "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)[~~(17)~~] "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."~~

~~(18)~~] "Declaration" means withdrawal of a horse entered in a race prior to the time of closing of entries **for the race[**~~therefor~~**]** in conformance with **811 KAR Chapter 2[**~~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)[~~(19)~~] "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 **KRS Chapter 230 or 811 KAR Chapter 2 and can include:**

(a)[~~a statute or administrative regulation and can include,~~**]** Refusal to issue or renew a license**;**

(b)[~~,~~**]** Revocation or suspension of a license**;**

(c)[~~,~~**]** Imposition of probationary conditions on a license**;**

(d)[~~,~~**]** Issuance of a written reprimand or admonishment**;**

(e)[~~,~~**]** Imposition of fines or penalties**;**

(f)[~~,~~**]** Denial of purse money**;**

(g)[~~,~~**]** Forfeiture of purse money**; or**

(h) Any combination of paragraphs (a) through (g) of this subsection[~~(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)[~~(21)~~] "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 **811 KAR Chapter 2[**~~these rules~~**]**. [~~(See "mutuel entry.")~~]

(28)[~~(23)~~] "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.

(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 totalizator, and the highest numbered horse within the numbering capacity of the totalizator 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) "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 in the race.

(35)[~~(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 **in the race.[**~~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.~~**]**

(36)[~~(35)~~**]** "Handle" means the aggregate of all pari-mutuel pools, excluding refundable wagers.

(37)[~~(36)~~**]** "Historical horse race" means any horse race that**:**

(a) Was previously run at a licensed pari-mutuel facility located in the United States**;**

(b)[~~and that~~**]** Concluded with official results**; and**

(c)[~~. An historical horse race must have~~**]** Concluded without scratches, disqualifications, or dead-heat finishes.

(38)[~~(37)~~**]**[~~(29)~~] "Horse" means a quarter horse, appaloosa, or Arabian[~~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 quarter horse, appaloosa, or Arabian~~**]**[~~Arabian, quarter horse or appaloosa~~] irrespective of age or sex designation.

(39)[~~(38)~~**]**[~~(30)~~] "Ineligible" means a horse or person not qualified under **811 KAR Chapter 2[**~~these rules~~**]** or conditions of a race to participate in a specified racing activity.

(40)[~~(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.

(41)[~~(40)~~**]**[~~(31)~~] "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.

(42)[~~(41)~~**]**[~~(32)~~] "Kentucky bred" **means[**~~is~~**]** a foal dropped by a mare after being bred in Kentucky.

(43)[~~(42)~~**]**[~~(33)~~] "Kentucky race" means a race in which the contestants are Kentucky bred and foaled horses as stipulated in the conditions **of the race**.

(44)[~~(43)~~**]**[~~(34)~~] "Lessee" means licensed owner whose interest in a horse is a leasehold.

(45)[~~(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.

(46)[~~(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~~].

(47)[~~(46)~~**]**[~~(36)~~] "Maiden" **means[**~~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.

(48)[~~(47)~~**]**[~~(37)~~] "Match race" means a race between two (2) horses for which no other horses are eligible.

(49)[~~(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.")~~**]**

(50)[~~(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.

(51)[~~(50)~~**]**[~~(39)~~] "Month" means calendar month.

(52)[~~(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."

(53)[~~(52)~~**]** "Net pool" means the total amount wagered less refundable wagers and takeout.

(54)[~~(53)~~**]**[~~(41) "Mutuel field" means the same as "field." (See subsection (24) of this section.)~~

~~(42)~~] "Nomination fee" **means a fee to keep a horse eligible to run in a stakes race**.**[**~~(See "subscription").~~**]**

(55)[~~(54)~~**]**[~~(43)~~] "Nominator" means any person in whose name a horse is entered for a stake race.

(56)[~~(55)~~**]**[~~(44)~~] "Off time" **means[**~~is~~**]** the moment at which, on signal of the starter, the horses break and run.

(57)[~~(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 **the[**~~such~~**]** horse.

(58)[~~(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.

(59)[~~(58)~~**]** "Patron" means an individual present at a track or a simulcast facility who observes or wagers on a live or historical horse race.

(60)[~~(59)~~**]** "Payout" means the amount of the net pool payable to an individual patron on his or her winning wager.

(61)[~~(60)~~**]**[~~(46)~~] "Place" **if[**~~when~~**]** used in the context of a single position in the order of finish in a race, means second; **if[**~~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; **if[**~~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.")~~**]**

(62)[~~(61)~~**]**[~~(47)~~] "Post" means the starting point of a race.

(63)[~~(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.

(64)[~~(63)~~**]**[~~(49)~~] "Post time" means the time set for the arrival at the starting point of the horses in a race.

(65)[~~(64)~~**]**[~~(50)~~] "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.

(66)[~~(65)~~**]**[~~(51)~~] "Purse" means the gross cash portion of the prize for which a race is run.

(67)[~~(66)~~**]**[~~(52)~~] "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.

(68)[~~(67)~~**]**[~~(53)~~] "Quarter horse" means a horse registered with the American Quarter Horse Association of Amarillo, Texas.

(69)[~~(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.

(70)[~~(69)~~**]**[~~(55)~~] "Race day" means any period of twenty-four (24) hours beginning at 12:01 a.m. and ending at midnight **in[**~~on~~**]** which live racing is conducted by an association [~~midnight and included in the period of a race meeting~~].

(71)[~~(70)~~**]**[~~(56)~~] "Racing official" means a racing commission member [~~commissioner~~], commission staff as duties require, and all association racing department employees, as duties require.

(72)[~~(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.

(73)[~~(72)~~**]**[~~(58)~~] "Recognized tracks" **means tracks that** are **[**~~those~~**]** conducting recognized meetings.

(74)[~~(73)~~**]**[~~(59)~~] "Registration certificate" means **the** 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.

(75)[~~(74)~~**]** "Result" means the part of the official order of finish in a race used to determine the pari-mutuel payoff of pools.

(76)[~~(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 **for the race[**~~therefor~~**]** in conformance with **811 KAR Chapter 2[**~~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 **a** 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 **the[**~~such~~**]** race, **the[**~~such~~**]** fees to be included in the purse.

(85)[~~(69)~~] "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.

(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.~~

~~(71)~~] "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 **stakes[**~~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 **the[**~~such~~**]** wagers; and records, displays, and stores pari-mutuel wagering information.

(93)[~~(74)~~] "Tote" or "[~~(~~]tote 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. **If[**~~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 **shall[**~~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 **a** 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)[~~(81)~~] "Workout" means training exercise of a horse on the training track or main track of an association during which **the[**~~such~~**]** horse is timed for speed over a specified distance.

(101)[~~(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.

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.

EMERGENCY ADMINISTRATIVE REGULATIONS FILED AS OF NOON, JUNE 15, 2011

STATEMENT OF EMERGENCY
302 KAR 29:061E

Pursuant to KRS 13A.190, the Governor of the Commonwealth of Kentucky does hereby declare that the proposed administrative regulation should be enacted on an emergency basis in order to allow employees from the Kentucky Transportation Cabinet, the Department for Public Health, local health departments and local officials to apply pesticide treatments to target mosquito larvae in standing water to help prevent emerging populations over the coming weeks. It is necessary to promulgate this administrative regulation on an emergency basis, because the normal process cannot timely accommodate the actions needed to combat the growing mosquito problem in Western Kentucky caused by recent floods. The mosquito population is a threat to public health, safety and welfare. This emergency administrative regulation will be allowed to expire and will not be replaced by an ordinary administrative regulation, as ample time for control will have passed.

STEVE BESHEAR, Governor
RICHIE FARMER, Commissioner of Agriculture

DEPARTMENT OF AGRICULTURE
(New Emergency Administrative Regulation)

302 KAR 29:061E. Temporary suspension of Category 8, public health, certification requirement.

RELATES TO: KRS Chapter 217B, 7 U.S.C. 136
STATUTORY AUTHORITY: KRS 217B.050, 217B.060
EFFECTIVE: June 3, 2011
NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050 requires the Commissioner of the Department of Agriculture to enforce the provisions of KRS Chapter 217B and to establish classifications of applicator and operator licenses and determine licensing conditions, procedures and fees. KRS 217B.060 requires persons seeking to apply pesticides to show upon examination that the applicant possesses adequate knowledge concerning the proper use and application of pesticides in the classification he or she has applied for. This emergency administrative regulation temporarily suspends the examination and certification requirement, only as it applies to Category 8 public health applicators, solely to allow employees from the Transportation Cabinet, the Department of Public Health, local health departments, and local officials to apply pesticide treatments to target mosquito larvae in standing water to help prevent emerging populations over the coming weeks.

Section 1. Application. (1) Employees from the Transportation Cabinet, the Department of Public Health, the Department of Fish and Wildlife, local health departments, and local officials will attend and participate in a training program developed and presented by representatives of Clarke Chemical Company, Departments of Agriculture and Public Health, and the Transportation Cabinet.

(2) After attending and participating in a training program, employees from the Transportation Cabinet, the Department of Public Health, local health departments, and local officials will allowed to apply pesticide treatments to target mosquito larvae in standing water.

RICHIE FARMER, Commissioner
APPROVED BY AGENCY: June 3, 2011
FILED WITH LRC: June 3, 2011 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed amendment to the administrative regulation shall be held on July 26, 2011, at 10 a.m. at the Department of Agriculture, Frankfort, Kentucky 40601. Individuals interested in being heard at the hearing shall notify this agency in writing at least 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by July 19, 2011, 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 August 1, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Clint Quarles, 500 Mero Street, 7th Floor, Frankfort, Kentucky 40601, phone (502) 564-1155, 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 emergency administrative regulation temporarily suspends the examination and certification requirement, only as it applies to Category 8 public health applicators, solely to allow employees from the Transportation Cabinet, the Department of Public Health, local health departments and local officials to apply pesticide treatments to target mosquito larvae in standing water to help prevent emerging populations over the coming weeks.

(b) The necessity of this administrative regulation: KRS 217B.060 requires public health employees pass an examination and become certified as a Category 8 applicator prior to making a pesticide application. This emergency administrative regulation temporarily suspends the examination and certification requirement.

(c) How this administrative regulation conforms to the content of the authorizing statues: KRS 217B.060 grants the KDA the authority to grant licenses for the application of pesticides in the Commonwealth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: See (1) (b).

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

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

(b) The necessity of the amendment to this administrative regulation: N/A

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: Employees from the Transportation Cabinet, the Department of Public Health, local health departments and local officials (approximately 10% of Category 8 public health applicators 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. See (1)(b).

(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:

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

(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 to implement this administrative regulation:

(a) Initially: Administrative costs of the emergency regulation should be minimal.

(b) On a continuing basis: This emergency regulation will only be in force temporarily, until July 31, 2011.

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

ing government resources.

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? State and local government employees that wish to participate in Category 8 spraying.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 217B.050, KRS 217B.060, KRS 217B, 7 U.S.C. 136

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 emergency regulation will not impact 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 emergency 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 emergency regulation will not generate revenue.

(c) How much will it cost to administer this program for the first year? Nothing.

(d) How much will it cost to administer this program for subsequent years? Nothing.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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, June 14, 2011)

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; and
(2)(a) Until August 31, 2011, the Kentucky Specialty Test of Instructional and Administrative Practices - eighty-five (85) percent correct responses; **or[**~~and~~**]**
(b) Beginning September 1, 2011, the Kentucky Specialty Test of Instructional and Administrative Practices (1015) administered by the Educational Testing Service with no passing score.

Section 3. The successful completion of 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)~~]. An applicant shall authorize that test results be forwarded to the Education Professional Standards Board by the Educational Testing Service[~~ETS~~].
(2) Public announcement of a testing date and location shall be issued sufficiently in advance to permit registration as required by the Educational Testing Service[~~ETS~~] and the Education Professional Standards Board.
(3)[~~(4)~~] An applicant shall seek information regarding the dates and location of the test and make application for the appropriate examination prior to the deadline established and sufficiently in advance of anticipated employment to permit test results to be received by the Education Professional Standards Board and processed in the normal certification cycle.

Section 5. (1) For the required School Leaders Licensure Assessment, the applicant shall pay all fees assessed by the Educational Testing Service.
(2)(a) Until August 31, 2011, an applicant**[.]**[~~ETS.~~
~~(2)~~] for the Kentucky Specialty Test of Instructional and Administrative Practices[~~, an applicant~~] shall pay a fee of eighty (80) dollars**.[**~~, and~~**]**
(b) Beginning September 1, 2011, an applicant for the Kentucky Specialty Test of Instructional and Administrative Practices shall pay all fees assessed by the Educational Testing Service.

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) 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: March 7, 2011
FILED WITH LRC: March 28, 2011 at 2 p.m.
CONTACT PERSON: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

FINANCE AND ADMINISTRATION CABINET
Kentucky Department of Revenue
Office of Income Taxation
(As Amended at ARRS, June 14, 2011)

103 KAR 15:195. Endow Kentucky Tax Credit.

RELATES TO: KRS 141.438, 147A.310

STATUTORY AUTHORITY: KRS 131.130(1), 141.438(8)(a)1

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.438 establishes a nonrefundable tax credit for a taxpayer making an endowment gift to a permanent endowment fund of a qualified community foundation, or county-specific component fund, or affiliate community foundation, which has been certified under KRS 147A.325. KRS 131.130(1) authorizes the department to promulgate administrative regulations to administer and enforce Kentucky's tax laws. This administrative regulation establishes the requirements for the department's allocation of the $500,000 tax credit that may be awarded each fiscal year under the provisions of KRS 141.438(6) and establishes the filing requirements for a taxpayer to obtain preliminary authorization and final approval of the tax credit from the department.

Section 1. Definitions. (1) "Affiliate community foundation" is defined by KRS 147A.310(1).

(2) "Applicant" means a taxpayer that files an application with the department to obtain preliminary authorization for the Endow Kentucky tax credit as required by KRS 141.438(7).

(3) "Application" means Revenue Form 41A720-S85, Application for Preliminary Authorization of the Endow Kentucky Tax Credit.

(4) "County-specific component fund" is defined by KRS 147A.310(3).

(5) "Department" means the Kentucky Department of Revenue.

(6) "Endowment gift" is defined by KRS 147A.310(4).

(7) "Final approval" means the applicant has received written notice from the department that proof of the endowment gift has been verified, as required by KRS 141.438(8)(c).

(8) "Identification number" means:

(a) A Social Security number for individuals;

(b) A Federal Employer Identification Number for general partnerships, estates, or trusts; or

(c) A Kentucky Corporation/LLET Account Number for corporations or limited liability pass-through entities.

(9) "Preliminary authorization" means the applicant has received written notice from the department that the application is in compliance with KRS 141.438.

(10) "Qualified community foundation" is defined by KRS 147A.310(6).

(11) "Received" means the application has been delivered in accordance with Section 2(2) of this administrative regulation and time stamped as received by the Office of Income Taxation, Division of Corporation Tax, Tax Credit Section.

(12) "Tax credit" means the credit established by KRS 141.438(3).

(13) "Tax credit cap" means the amount provided by KRS 141.438(6).

Section 2. Application for Preliminary Authorization of the Endow Kentucky Tax Credit.

(1) An applicant that seeks to obtain preliminary authorization of a tax credit shall file an application with the department.

(2) The application shall be delivered to the department by one of the following methods:

(a) By fax to (502) 564-0058;

(b) By electronic mail sent to the department's mailbox at KRC.WEBResponseEconomicDevelopmentCredits@ky.gov; or

(c) Hand-delivered to the Department of Revenue, 1st floor security desk at 501 High Street, Frankfort, Kentucky 40601. Security personnel shall notify the Office of Income Taxation, Division of Corporation Tax, Tax Credit Section, who shall stamp the application at the security desk as received.

(3) The department shall review the applications received via the methods **required by** **[**~~prescribed in~~**]** subsection (2) of this section as prescribed by this subsection.

(a)1. Applications for the fiscal year ending June 30, 2011 delivered to the department beginning at midnight Eastern Time on April 11, 2011 through 11:59 p.m. Eastern Time on April 15, 2011 shall be considered for approval and shall be treated as having been filed at the same time.

2. If the tax credit cap is exceeded for applications received within the time prescribed by **subparagraph[**~~clause~~**]** 1. of this **paragraph[**~~subparagraph~~**]**, the tax credit amounts receiving preliminary authorization shall be prorated by the fraction prescribed by paragraph (b) of this subsection.

(b) Tax credit amounts receiving preliminary authorization that are required to be prorated under paragraph (a)2. of this subsection shall be multiplied by a fraction, the numerator of which shall be the tax credit cap and the denominator of which shall be the total tax credit amounts receiving preliminary authorization for applications received during the time frame prescribed in paragraph (a)1. of this subsection.

(c) A fiscal year 2011 application filed prior to April 11, 2011, shall be considered as received at midnight Eastern Time on April 11, 2011.

(d)1. If the remaining tax credit cap is not fully allocated for the fiscal year ending June 30, 2011 for applications received during the period described in paragraph (a)1. of this subsection, a second period for accepting applications shall commence on April 18, 2011 and end on April 22, 2011.

2. All applications received during the time frame prescribed by **subparagraph[**~~clause~~**]** 1. of this **paragraph[**~~subparagraph~~**]** shall be treated as having been received at the same time.

3. If the tax credit cap is exceeded for applications received by the department within the time period prescribed by **subparagraph[**~~clause~~**]** 1. of this **paragraph[**~~subparagraph~~**]**, the tax credit amounts receiving preliminary authorization shall be prorated by the fraction prescribed by **subparagraph[**~~clause~~**]** 4. of this **paragraph[**~~subparagraph~~**]**.

4. Tax credit amounts receiving preliminary authorization that are required to be prorated under the provisions of **subparagraph[**~~clause~~**]** 3. of this **paragraph[**~~subparagraph~~**]** shall be multiplied by a fraction, the numerator of which shall be the portion of the tax credit cap not allocated under paragraph (a) of this subsection and the denominator of which shall be the total tax credit amounts receiving preliminary authorization for applications delivered during the time prescribed in **subparagraph[**~~clause~~**]** 1. of this **paragraph[**~~subparagraph~~**]**.

5. Any tax credit cap for the fiscal year ending June 30, 2011 that is not fully allocated by the close of the period prescribed in **subparagraph[**~~clause~~**]** 1. of this **paragraph[**~~subparagraph~~**]** shall be allocated on a first-come, first-serve basis beginning with applications received on or after April 25, 2011.

(4)(a) For fiscal years beginning on or after July 1, 2011, applications received by the department beginning at midnight Eastern Time on July 1 through 11:59 p.m. Eastern Time on July 7 shall be treated as having been filed at the same time.

(b) If the tax credit cap is exceeded for applications received by the department within the time prescribed by paragraph (a) of this subsection, the tax credit amounts receiving preliminary authorization shall be prorated by the fraction prescribed by paragraph (c) of this subsection.

(c) Tax credit amounts receiving preliminary authorization that are required to be prorated under the provisions of paragraph (b) of this subsection shall be multiplied by a fraction, the numerator of which shall be the tax credit cap and the denominator of which shall be the total tax credit amounts receiving preliminary authorization for applications delivered during the time period prescribed in paragraph (a) of this subsection.

(d) If the tax credit cap is not fully allocated for a fiscal year that begins on or after July 1, 2011 for applications received during the period described in paragraph (a) of this subsection, a second period for accepting applications shall commence on July 8 of the fiscal year and end on July 14 of the fiscal year.

(e) All applications received during the time frame prescribed by paragraph (d) of this subsection shall be treated as having been filed at the same time.

(f) If the remaining tax credit cap is exceeded for applications received by the department within the time prescribed by paragraph (d) of this subsection, the tax credit amounts receiving preliminary authorization shall be prorated by the fraction prescribed by paragraph (g) of this subsection.

(g) Tax credit amounts receiving preliminary authorization that are required to be prorated under the provisions of paragraph (f) of this subsection shall be multiplied by a fraction, the numerator of which shall be the portion of the tax credit cap not allocated during

the first time period under paragraph (a) of this subsection and the denominator of which shall be the total tax credit amounts receiving preliminary authorization for applications delivered during the time prescribed in paragraph (d) of this subsection.

(h) For fiscal years beginning on or after July 1, 2011, any tax credit cap not allocated under paragraphs (a) to (g) of this subsection shall be allocated on a first-come, first-serve basis beginning with applications received on or after July 15 of the fiscal year. If the tax credit cap is met under the provisions of this paragraph, subsequent applications shall be denied.

(5) An application shall not be submitted prior to July 1st for each fiscal year beginning on or after July 1, 2011. **[**~~If July 1st falls on a Saturday, Sunday or state holiday, the first day an application may be filed shall be the first business day after July 1st.~~**]**

(6) The department shall notify the applicant within thirty (30) calendar days after receipt of the application whether preliminary authorization of the tax credit is denied or approved.

(a) If the department denies preliminary authorization of the tax credit, the applicant shall be notified in writing by the department of the reason for the denial.

(b) If the department approves the tax credit application, a copy of the application shall be returned to the applicant with written notice of the department's preliminary authorization.

(7) Any restored tax credit cap described in KRS 141.438(8)(d) shall be re-allocated to the pool of applications received during the same time period in which the application was received from the applicant that had the preliminary approval voided. Any restored tax credit cap shall be re-allocated based on the applicable requirements prescribed by subsections (3) or (4) of this section. The other applicants from the same pool shall receive amended preliminary approvals reflecting the re-allocation.

(8)**(a)** The percentage of proration for the pool of applicants described in subsection (3)(d)1. of this section shall not exceed the percentage of proration for the pool of applicants described in subsection (3)(a)1. of this section.

(b) **[**~~Further,~~**]** The maximum tax credit amount for the pool of applicants described in subsection (3)(d)5. of this section shall not exceed the maximum tax credit amount received by the pool of applicants described in subsections (3)(a)1. and (3)(d)1. of this section.

(9)**(a)** The percentage of proration for the pool of applicants described in subsection (4)(d) of this section shall not exceed the percentage of proration for the pool of applicants described in subsection (4)(a) of this section.

(b) **[**~~Further,~~**]** The maximum tax credit amount for the pool of applicants described in subsection (4)(h) of this section shall not exceed the maximum tax credit amount received by the pool of applicants described in subsections (4)(a) and (4)(d) of this section.

Section 3. Information Required on or Attached to the Application. The following information shall be required on or attached to the application:

(1) The applicant's name, mailing address, identification number, telephone number, and fax number;

(2) The entity type of the applicant for Kentucky income tax purposes;

(3) The submission date of the application;

(4) The amount of the endowment gift;

(5) The amount of tax credit;

(6) (a) The qualified community foundation's or affiliate community foundation's name, mailing address, identification number, telephone number, and fax number; or

(b) If a county–specific component fund, its name; and

(7) A statement that the application was executed by the applicant or authorized representative, declaring under the penalty of perjury that the application, including all accompanying documents and statements, is true, correct and complete.

Section 4. Proof of Endowment Gift. (1) Within thirty (30) calendar days after receiving the notice of preliminary authorization of the tax credit from the department, the taxpayer shall make the endowment gift to the permanent endowment fund held by the approved qualified community foundation, county-specific component fund, or affiliate community foundation.

(2) The applicant shall provide the department with proof of the endowment gift within ten (10) calendar days of making the gift by filing with the department Revenue Form 41A720-S86, Notice of Endow Kentucky Tax Credit and Certification (Schedule ENDOW).

(3) If the department has verified that the endowment gift specified on the application was made to the approved qualified community foundation, county-specific component fund, or affiliate community foundation, Schedule ENDOW shall be returned to the applicant with the department's final approval of the tax credit.

(4) If the applicant fails to make an endowment gift or provide proof of the endowment gift to the department within the time frames established in KRS 141.438(7), the department shall revoke the preliminary authorization of the tax credit by written notification to the applicant. The department shall restore the denied amount to the tax credit cap and re-allocate the restored amount under the requirements established in Section 2(7) of this administrative regulation.

Section 5. Preliminarily Authorized Amounts Not Affected by Proration. (1) If an applicant approved for preliminary authorization makes an endowment gift that is less than the amount indicated on the application and all the other applicable requirements of KRS 141.438 and this administrative regulation are met by the applicant, the department shall:

(a) Issue final approval based on the amount proven; and

(b) Restore to the tax credit cap the difference between the amount of tax credit that received preliminary authorization and the amount receiving final approval.

(2) The amount restored to the tax credit cap shall be re-allocated as provided in Section 2(7) of this administrative regulation.

Section 6. Preliminarily Authorized Amounts Affected by Proration. If an applicant receives preliminary authorization for an amount but due to the proration provisions in Section 2 of this administrative regulation will receive a tax credit for less than the amount for which the applicant is preliminarily approved, the applicant may donate the lesser prorated amount without penalty and receive the corresponding tax credit of the lesser prorated amount.

Section 7. Information Required on or Attached to the Schedule ENDOW. The following information shall be required on or attached to the Schedule ENDOW:

(1) The applicant's name, mailing address, identification number, telephone number, and fax number;

(2) The entity type of the applicant for Kentucky income tax purposes;

(3) The date the endowment gift was made to the approved qualified community foundation, county-specific component fund, or affiliate community foundation;

(4) The amount of the endowment gift;

(5) The date of the department's preliminary authorization of the tax credit;

(6)(a) The qualified community foundation's or affiliate community foundation's name, mailing address, identification number, telephone number, and fax number; or

(b) If a county–specific component fund, its name; and

(7) A statement that the Schedule ENDOW was executed by a foundation officer or designee, declaring under the penalty of perjury that the:

(a)**1.** Foundation is a qualified community foundation as provided by KRS 147A.310(6);

2.[~~(b)~~**]** Foundation is a qualified affiliate community foundation as provided by KRS 147A.310(1); **or**

3. Fund is a[~~(c)~~**]** county-specific component fund as provided by KRS 147A.310(3)**;**

(b)[~~. (d)~~**]** Endowment gift is held in a permanent endowment fund as provided by KRS 147A.310(4); and

(c)[~~(e)~~**]** Schedule ENDOW, including all accompanying documents and statements, is true, correct and complete.

Section 8. Return Filing Requirement. (1) An applicant claiming the tax credit shall attach each tax year a copy of the approved

Schedule ENDOW to the tax return on which the credit is claimed.

(2) An applicant claiming the tax credit shall not claim more than $10,000 in credit on a single return.

(3) A partner, member, or shareholder of an applicant claiming the tax credit shall attach each taxable year a copy of Schedule K-1, Form 720S (Revenue Form 41A720S(K-1)); Schedule K-1, Form 765 (Revenue Form 41A765(K-1)); or Schedule K-1, Form 765-GP (Revenue Form 42A765-GP(K-1)), incorporated by reference in 103 KAR 3:040, to the partner's, member's, or shareholder's tax return on which the credit is claimed.

(4) A beneficiary of an applicant that is an estate or trust shall attach each taxable year a copy of Schedule K-1, Form 741 (Revenue Form 42A741(K-1)), incorporated by reference in 103 KAR 3:040, to the beneficiary's tax return on which the credit is claimed.

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

(a) Revenue Form 41A720-S85, "Application for Preliminary Authorization of the Endow Kentucky Tax Credit", February 2011; and

(b) Revenue Form 41A720-S86, "Notice of Endow Kentucky Tax Credit and Certification (Schedule ENDOW)", February 2011.

(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 40601 or at any Kentucky Department of Revenue Taxpayer Service Center, Monday through Friday, 8:00 a.m. to 4:30 p.m.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: April 1, 2011

FILED WITH LRC: April 1, 2011 at 3 p.m.

CONTACT PERSON: DeVon Hankins, Policy Advisor, Office of General Counsel, Finance and Administration Cabinet, 392 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-6660, fax (502) 564-9875.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, June 14, 2011)

301 KAR 2:300. Black bears.

RELATES TO: KRS 150.010, 150.092, 150.170, 150.175[~~, 150.180, 150.300, 150.305, 150.340, 150.360, 150.370, 150.395, 150.990~~]

STATUTORY AUTHORITY: KRS 150.025(1)[~~, 150.120(4),~~] 150.390(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to set seasons, establish bag or creel limits, to regulate the buying, selling, or transporting of fish and wildlife, and to make these requirements apply to a limited area. KRS 150.390(1) restricts the possession, taking, or pursuit of bears in any manner contrary to the provisions of KRS Chapter 150 or its administrative regulations.[~~KRS 150.025 and 150.390 authorize the department to promulgate administrative regulations governing hunting seasons, bag limits, methods of taking and other matters necessary to carry out the purpose of KRS Chapter 150. This administrative regulation establishes the hunting season, prescribes legal methods of taking, and establishes harvest reporting requirements for black bear hunting. EO 2008-516, effective June 16, 2008, reorganizes and renames the Commerce Cabinet as the Tourism, Arts and Heritage Cabinet.~~]

Section 1.Definitions. (1) "Adult" means an individual who is at least eighteen (18) years of age.

(2) "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.

(3) "Arrow" means the projectile fired from a bow or crossbow.

(4) "Baited area" means an area where feed, grains, or other substances capable of luring black bears have been placed.

(5) "Barbed broadhead" means a point or portion of a blade projecting backward from a broadhead designed to hold an arrow within an animal.

(6) "Bear" means the species Ursus americanus;

(7) "Bear permit" means a permit, which in conjunction with appropriate licenses, seasons, and methods, allows the holder to take one (1) black bear of either sex.

(8) "Bear zone" means the following Kentucky counties: Harlan, Letcher, and Pike.

(9) "Crossbow" means a bow designed or fitted with a device to hold an arrow at full or partial draw without aid from the archer.

(10) "Firearm" means a breech or muzzle-loading rifle, shotgun, or handgun.

(11) "Fully-automatic firearm" means a firearm which fires more than one (1) time with a single pull from the trigger.

(12) "License year" means the period from March 1 through the following last day of February.

(13) "Modern gun" means a rifle, handgun, or shotgun which is loaded from the rear of the barrel.

(14) "Muzzle-loading gun" means a rifle, shotgun, or handgun which is loaded from the discharging end of the barrel or discharging end of the receiver.

(15) "Shotshell" means ammunition discharged from a shotgun.

(16) "Youth" means a person under the age of sixteen (16) by the day of the hunt.

Section 2. Feeding and Pursuing Black Bears. A person shall not:

(1) Engage in any direct or indirect feeding of black bears; or

(2) Pursue or chase black bears with dogs.

Section 3. License and Bear Permit Requirements. (1) A bear permit may only be purchased by a resident of Kentucky; and

(2) Unless exempted by KRS 150.170, a person hunting bear shall have a valid Kentucky hunting license and valid bear permit while hunting.

Section 4. Hunter Restrictions. (1) A person shall not:

(a) Harvest a bear except during daylight hours;

(b) Use[~~Bear Damage Control. The department may authorize department personnel to remove or destroy a bear causing property damage. A person authorized to destroy a bear causing damage shall not:~~

~~(1) Move the bear without attaching a disposal permit provided by the department to the carcass; and~~

~~(2) Remove the disposal permit until the carcass is processed.~~

~~Section 5. Hunter Restrictions. (1) A bear hunter:~~

~~(a) Shall not harvest~~

~~bear except during daylight hours;~~

~~(b) Shall not use~~] dogs, except leashed tracking dogs may be used to recover wounded bears;

(c) Hunt[~~Shall not hunt~~] bear on a baited area:

1. While bait is present; or

2. For thirty (30) days after the bait has been removed;

(d) Harvest:[~~.Shall not harvest:~~]

1. A female bear that has a cub; or

2. A bear that weighs less than seventy-five (75) pounds;

(e) Harvest[~~Shall not harvest~~] a bear that is swimming; and

(f) Harvest a bear if the person[~~Shall not harvest a bear if the hunter~~] is in a vehicle, boat or on horseback, except that a hunter in possession of a disabled hunting exemption permit issued by the department may use a stationary vehicle as a hunting platform;

(g) Harvest a bear in a den; or

(h) Disturb a bear in a den for the purpose of taking the bear when it exits the dens.

(2) An adult shall accompany and maintain control of a youth who is hunting bear with a firearm.

Section 5. Weapon Restrictions. (1) A person shall not use the

following to take a bear:[~~6. Weapon Restrictions. (1) A bear hunter shall not use or carry, except as provided by KRS 237.110 while bear hunting:~~]

(a) A device capable of taking a bear other than[~~except~~] a firearm, crossbow, or archery equipment;

(b) A modern firearm less than .270 caliber;

(c) A muzzle-loading firearm less than .50 caliber;

(d) A shotgun less than twenty gauge;

(e) Rimfire ammunition;

(f) A fully automatic weapon;

(g) A firearm with a magazine capacity greater than ten (10) rounds;

(h) Steel-jacketed ammunition;

(i) Tracer bullet ammunition;

(j) A shotshell containing more than one (1) projectile;

(k) A broadhead smaller than seven-eighths (7/8) inch wide;

(l) A barbed broadhead;

(m) A crossbow without a working safety device;

(n) A chemically treated arrow; and

(o) An arrow with a chemical attachment.

(2) A person shall not take a bear with a handgun that:

(a) Does not have a barrel length of at least six (6) inches;

(b) Does not have a bore diameter of at least 0.270 inches; and

(c) Does not fire a bullet that produces at least 550 ft/lbs of energy at 100 yards.

Section 6.[~~A handgun used to hunt bear shall have a barrel length of at least six (6) inches, have a bore diameter of at least 0.270 inches (.270 caliber), and when fired, the bullet shall produce at least 550 ft/lbs of energy at 100 yards.~~

~~(3) A person authorized to carry a concealed deadly weapon pursuant to KRS 237.110, shall not use that firearm to harvest a bear unless that firearm conforms to the provisions of subsection (1) of this section.~~

~~Section 7.~~] Hunter Orange Clothing Requirements. (1) During any modern gun or muzzle-loading season for bears, a person hunting any species, and any person accompanying a hunter, shall display solid, unbroken hunter orange visible from all sides on the head, back, and chest, except these requirements shall not apply to a person hunting:

(a) Waterfowl; or

(b) Furbearers at night during a legal furbearer season.

(2)[~~.~~

~~(2) Requirements in this section shall not apply to a person:~~

~~(a) Hunting waterfowl; or~~

~~(b) Hunting furbearers at night during a legal furbearer season.~~

~~(3)~~] The hunter orange portions of a garment worn to fulfill the requirements of this section:

(a) May display a small section of another color; and

(b) Shall not have mesh weave openings exceeding one-fourth (1/4) inch by any measurement.

Section 7.[~~8.~~] Bear Zone Season Dates and Bag Limits. (1) A person shall only harvest a bear in the Bear Zone.

(2) The bear season shall be for two (2) consecutive days beginning on the second Saturday in December.[~~A hunter may take bear using weapons described in Section 4 of this administrative regulation for two (2) consecutive days beginning the third Saturday in December, effective December 2009.~~]

(3) A person shall not take more than one (1) bear in a license year.

Section 8. Bear Quota and Season Closure. (1) The bear season shall close after daylight hours on the day when the following quota has been reached:

(a) Ten (10) bears; or

(b) Five (5) female bears.[~~9. Bear Quota and Season Closure. (1) The bear season shall close on the day when the quota of:~~

~~(a) Ten (10) bears have been harvested; or~~

~~(b) Five (5) female bears have been harvested.~~]

(2) A bear hunter shall call 800-858-1549[~~1-800-858-1549~~] after 9 p.m. each day of the legal bear season to determine if the annual quota has been reached.

Section 9.[~~10.~~] Bear Sanctuaries. (1) The following areas within the Bear Zone shall be closed to bear hunting:

(a) Hensley-Pine Mountain Wildlife Management Area; and

(b) The area surrounding Hensley-Pine Mountain Wildlife Management Area: starting at the intersection of Sand Hill Bottom Road and North US Hwy 119 in Cumberland, the boundary proceeds northeast along North US Hwy 119 to the intersection of US Hwy 119 and Kentucky Hwy 2035. The boundary then proceeds west along Kentucky Hwy 2035 to the intersection of Kentucky Hwy 2035 and Kentucky Hwy 931. The boundary continues southwest along Kentucky Hwy 931 to the intersection of Kentucky Hwy 931 and Kentucky Hwy 160, then proceeds southwest along Kentucky Hwy 160 to the intersection of Kentucky Hwy 160 and Kentucky Hwy 463 in Gordon. The boundary then proceeds south and east along Kentucky Hwy 160 to the intersection of Kentucky Hwy 160 and Sand Hill Bottom Road in Cumberland, then south along Sand Hill Bottom Road to the intersection with North US Hwy 119, completing the boundary.

(2) Kentucky resident landowners, their spouses, and dependent children may hunt bears on their own property within the closed area referenced in **subsection (1)(b) of this section [**~~paragraph (b) of this subsection~~**]**[~~subsection (b) of this section~~].

Section 10. Harvest Recording and Check-in Requirements. (1) Immediately after harvesting a bear, and before moving the carcass, a person shall record on a hunter's log the:

(a) Species taken;

(b) Date taken;

(c) County where taken; and

(d) Sex of the bear.

(2) A person who has harvested a bear shall:

(a) Retain and possess a completed hunter's log when the person is in the field during the season;

(b) Register a harvested bear at a department-operated check station immediately after leaving the field;

(c) Telecheck the bear before leaving the check station by:

1. Calling 800-245-4263 and completing the telecheck process; and

2. Recording the confirmation number on the hunter's log; and

(d) Attach to the carcass a department issued tag prior to leaving the check station.[~~11. Harvest Recording and Check-in Requirements. Immediately after harvesting a bear, and before moving the carcass, a person shall:~~

~~(1) Record in writing the:~~

~~(b) The date taken;~~

~~(c) The county where taken; and~~

~~(d) Sex of the bear.~~

~~(2) This information shall be recorded on a hunter's log.~~

~~(3) Retain the completed hunter's log in possession whenever the hunter is in the field during the current season.~~

~~(4) A successful hunter shall register a harvested bear at a department operated check in station immediately after leaving the field. Before leaving the check in station, a successful bear hunter shall telecheck the bear by calling 1-800-245-4263 and record the confirmation number on a hunter's log.~~

~~(5) After registering a bear, the hunter shall attach a tag, issued by the department, to the carcass.~~]

BENJY KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY THE AGENCY: April 14, 2011

FILED WITH LRC: April 15, 2011 at 10 a.m.

CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, extension 4507, fax (502) 564-9136.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice
Division of Community and Mental Health Services
(As Amended at ARRS, June 14, 2011)

505 KAR 1:130. Department of Juvenile Justice Policies and Procedures Manual: juvenile services in community.

RELATES TO: KRS 15A.065, 15A.067, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.067, 15A.160, 605.150, 635.095, 635.100(7), 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.067, 15A.160, 15A.210, 15A.305(5), 605.150, 635.095 and 640.120 authorize the Justice Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation incorporates by reference into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

Section 1. Incorporation by Reference. (1) The "Department of Juvenile Justice Policy and Procedures Manual: Juvenile Services in Community", **June 14[**~~May 13~~**]**[~~February 15~~], 2011[~~April 12, 2006~~], is incorporated by reference and includes the following:

600 Policy Definitions (Amended **6/14/11[**~~5/13/11~~**]**[~~2/15/11~~])[~~Initial Contact and Court Support (Amended 12/15/05)~~]
601 Initial Contact and Court Support for Public Offenders (Amended 5/13/11[~~2/15/11~~])
601.1 Initial Contact and Court Support for Youthful Offenders (Amended **6/14/11[**~~5/13/11~~**]**[~~2/15/11~~])[~~Case Registration and Case Management (Amended 12/15/05)~~]
602 Individual Client Record (Amended **6/14/11[**~~5/13/11~~**]**[~~2/15/11~~])[~~Service Complaints (Amended 12/15/05)~~]
603 Service Complaints (Amended **6/14/11[**~~5/13/11~~**]**[~~2/15/11~~])[~~Children's Benefits (Amended 12/15/05)~~
~~603.1 Title IV-E: Federal Foster Care Maintenance Payments (Amended 12/15/05)~~
~~603.2 Trust Funds (Amended 12/15/05)~~]
604 Individual Treatment Plans (Amended 5/13/11[~~2/15/11~~] [~~12/15/05~~])
605 Community Supervision (Amended **6/14/11[**~~5/13/11~~**]**[~~2/15/11~~])[~~Juvenile Service Case Records (Amended 3/15/06)~~
~~605.1 Running Records (Amended 12/15/05)~~
~~605.2 Critical Incident Reports (Amended 12/15/05)~~]
606 Probation of Public Offenders (Amended **6/14/11[**~~5/13/11~~**]**[~~2/15/11~~])[~~Transportation of Committed Youth (Amended 12/15/05)~~]
607 Commitment of Public Offenders (Amended **6/14/11[**~~5/13/11~~**]**)[~~2/15/11~~] [~~Probation (Amended 12/15/05)~~
~~607.1 Revocation of Probation (Amended 12/15/05)~~
~~607.2 Termination of Probation (Amended 3/15/06)~~]
608 Drug Screening and Testing (Amended **6/14/11[**~~5/13/11~~**]**[~~2/15/11~~])[~~Youthful Offender Shock Probation (Amended 12/15/05)~~]
609 Children's Benefits (Amended **6/14/11[**~~2/15/11~~**]**)[~~Referral for Out-of-Home Placement (Amended 12/15/05)~~]
609.1 Title IV-E Foster Care Maintenance Payments (Amended 5/13/11[~~2/15/11~~])[~~Youth Awaiting Out-of-Home Placement (Amended 12/15/05)~~]
609.2 Trust Funds (Amended 2/15/11)[~~Services to Youth in Out-of-Home Placement (Amended 4/12/06)~~]
610 Transportation of Committed Youth (Amended 2/15/11)[~~Authorized Leave for Youth in Out-of-Home Placement (Amended 3/15/06)~~]
610.1 Out-of-State Travel (Amended 2/15/11)[~~Youth AWOL/Escape (Amended 3/15/06)~~]
611 Electronic Monitoring (Amended **6/14/11[**~~2/15/11~~**]**)[~~Mental Health Services (Amended 12/15/05)~~
~~611.1 Mental Health Emergencies (Amended 12/15/05)~~]
612 Authorized Leave for Public Offenders and Youthful Offenders in Placement (Amended **6/14/11[**~~5/13/11~~**]**[~~Added 2/15/11~~])
613 Supervised Placement Revocation (Amended 5/13/11[~~Added 2/15/11~~])
614 Intensive Aftercare Program **(Amended 6/14/11)[**~~(Added 2/15/11)~~**]**
615 Juvenile Intensive Supervision Team (JIST) (Added 2/15/11)
616 Youthful Offenders-Confined, Shock Probated, and Transferred to the Department of Corrections (Amended **6/14/11[**~~5/13/11~~**]**[~~Added 2/15/11~~])
616.1 Probation[~~Parole~~] of Youthful Offenders **(Amended 6/14/11)[**~~(Added 2/15/11)~~**]**
616.2 Parole of Youthful Offenders
617 Incident Reports (Amended 2/15/11)[~~Community Supervision (Amended 12/15/05)~~
~~617.1 Intensive Aftercare Program (Amended 12/15/05)~~]
618 AWOL or Escape (Amended 5/13/11[~~2/15/11~~])[~~Juvenile Intensive Supervision Team (JIST) (Amended 12/15/05)~~]
620 Use of Force and Searches (Amended **6/14/11 [**~~5/13/11~~**]**[~~2/15/11~~])
621 Mental Health Services, Referrals, and Psychiatric Hospitalization (Amended **6/14/11[**~~5/13/11~~**]**[~~2/15/11~~])
622 Community Mental Health Operations (Amended 5/13/11[~~Added 2/15/11~~])
623 Health and Safety for Community and Mental Health Services (Amended **6/14/11[**~~5/13/11~~**]**[~~Added 2/15/11~~])[~~Supervised Placement Revocation (Amended 12/15/05)~~
~~621 Searches (Amended 12/15/05)~~
~~626 Sex Offender Treatment (Amended 3/15/06)~~
~~629 Administrative Discharge from Commitment (Amended 3/15/06)~~]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Juvenile Justice, Office of the Commissioner, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601, or at any department field office, Monday through Friday, 8 a.m. to 4:30 p.m.

J. RONALD HAWS, Commissioner

APPROVED BY AGENCY: February 15, 2011

FILED WITH LRC: February 15, 2011 at 10 a.m.

CONTACT PERSON: Joslyn Olinger Glover, Staff Attorney, Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-2738, fax (502) 573-0836.

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, June 14, 2011)

811 KAR 2:190. Kentucky Quarter Horse, Appaloosa, and Arabian Development Fund.

RELATES[~~RELEATES~~**]** TO: KRS 230.215, 230.225, 230.443, 230.445

STATUTORY AUTHORITY: KRS 230.215, 230.260, 230.445

NECESSITY, FUNCTION AND CONFORMITY: KRS 230.215 and 230.260 authorize the commission to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. KRS 230.445 establishes the Kentucky Quarter Horse, Appaloosa, and Arabian Development Fund and requires the commission to promulgate administrative regulations to carry out the purpose of the statute and to administer the development fund in a manner to promote and aid in the development of the horse industry in Kentucky; upgrade the quality of racing in Kentucky; and to improve the quality of horses bred in Kentucky. This administrative regulation establishes eligibility standards, administrative practices to enforce the standards, and the

administration of purses and payments in these races.

Section 1. Definitions. (1) **[**~~"Appaloosa" is defined in 811 KAR 2:010.~~

~~(2) "Arabian" is defined in 811 KAR 2:010.~~

~~(3) "Breeder", means the owner of the dam at the time of service.~~

~~(4)~~**]** "Donor mare" means the mare from which an embryo is harvested for the purpose of performing an embryo transfer.

(2)[~~(5)~~**]**[~~(4)~~] "Kentucky bred" means **a horse that meets the other requirements of this administrative regulation and is:**

(a) A quarter horse or appaloosa, whose sire is a quarter horse, appaloosa, or thoroughbred currently registered with the KQHAADF**;**

(b)[~~, or~~**]** A quarter horse or appaloosa whose dam is a quarter horse, appaloosa, or thoroughbred currently registered with the KQHAADF**; or**

(c)[~~, or~~**]** An Arabian whose sire and dam are Arabians currently registered with the KQHAADF. **[**~~Horses must meet all other requirements of this administrative regulation in order to be considered to be a Kentucky bred.~~**]**

(3)[~~(6)~~**]**[~~(5)~~] "Kentucky Quarter Horse, Appaloosa**,** and Arabian Development Fund" **or "KQHAADF"** means the trust and revolving fund established by KRS 230.445. **[**~~(7)~~**]**[~~(6)~~] **[**~~"KQHAADF" means the Kentucky Quarter Horse, Appaloosa and Arabian Development Fund.~~**]**

(4)[~~(8)~~**]**[~~(7)~~] "Kentucky Quarter Horse Racing Association Stallion Auction" means the auction of stallion seasons offered by the Kentucky Quarter Horse Racing Association. **[**~~(9)~~**]**[~~(8)~~] **[**~~"Quarter horse" is defined in 811 KAR 2:010.~~**]**

Section 2. Advisory Committee. (1) The proposed distribution of money for KQHAADF funded races shall be reviewed and addressed annually, not later than December 31 of each calendar year, by an advisory committee consisting of at least one (1) representative of each of the following:

(a) The racing commission;

(b) The licensed racing associations in Kentucky that host quarter horse, appaloosa, or Arabian racing;

(c) The owner of a stallion registered with the KQHAADF**, that resides in Kentucky**;

(d) The owner of a mare registered with the KQHAADF**, that resides in Kentucky**; and

(e) One member of the Kentucky Quarter Horse Racing Association that resides in Kentucky, selected by that organization's board of directors.

(2) The final determination regarding the distribution of money from the KQHAADF shall be made by the commission.

Section 3. Stallion Eligibility. (1) In order for a stallion's progeny to be eligible to earn KQHAADF money, the stallion shall be registered with the KQHAADF on or before December 31 of the year prior to the breeding year.

(2) In order to be eligible to be registered with the KQHAADF, a stallion shall:

(a) Be domiciled in Kentucky continuously from its first cover of the breeding season until its last cover of the breeding season; or

(b) Have a breeding season purchased through the Kentucky Quarter Horse Racing Association Stallion Auction.

(3) If a KQHAADF registered stallion leaves Kentucky to breed a mare, his registration for that year shall be revoked and his progeny shall not be eligible to register with the KQHAADF.

(4) A stallion shall be registered **with** the KQHAADF by:

(a) Completing and filing with the commission a Quarter Horse/Appaloosa/ Arabian Stallion Registration, KHRC 190-1 **(5/11)[**~~(2/11)~~**]**; and

(b) Paying a registration fee of $100.

Section 4. Broodmare Eligibility. (1) In order for a broodmare's progeny to be eligible to earn KQHAADF money, the broodmare shall be registered with the KQHAADF on or before December 31 **of the year** prior to the breeding year.

(2) In order to be eligible to be registered with the KQHAADF, a broodmare **shall[**~~must~~**]** be domiciled in Kentucky continuously from December 31 **of the year** prior to the breeding year until delivery of her foal.

(3) A broodmare shall be registered **with** the KQHAADF by:

(a) Completing and filing with the commission a Quarter Horse/Appaloosa/Arabian Broodmare Registration, KHRC 190-2 (2/11); and

(b) Paying a registration fee of twenty-five (25) dollars.

(4) Broodmares that have competed in a race during the breeding year and are registered with the Kentucky Quarter Horse Racing Association as racing stock shall be registered as breeding stock prior to being bred. The registration shall be accompanied by a registration fee of twenty-five (25) dollars.

Section 5. Racing Stock Nomination. (1) Except as set forth in subsection (3) of this section, in order for racing stock to be eligible to earn KQHAADF money, it shall be nominated to the KQHAADF on or before December 31 of its three (3) year-old year by:

(a) Completing and filing with the commission a Quarter Horse/Appaloosa/Arabian Racing Stock Nomination, KHRC 190-3 (2/11); and

(b) Paying a nomination fee of twenty-five (25) dollars if nominating as a weanling, fifty (50) dollars if nominating as a yearling, or $100 if nominating as a two (2) or three (3) year-old.

(2) Foals that are the product of an embryo transfer **may[**~~shall be permitted to~~**]** be nominated to the KQHAADF if the recipient mare is domiciled in Kentucky as set forth in Section 4 of this administrative regulation. If a donor mare produces more than one (1) foal in a breeding season, only the first born foal **may[**~~will be eligible to~~**]** be nominated to the KQHAADF.

(3) Until December 31, 2012, racing stock of any age shall be eligible to be nominated to the KQHAADF and to participate in races, a part of the purse for which is provided by money from the KQHAADF. **A[**~~Any such~~**]** horse shall be nominated by:

(a) Completing and filing with the commission a Quarter Horse/Appaloosa/Arabian Racing Stock Nomination, KHRC 190-3 (2/11);

(b) Paying a nomination fee of fifty (50) dollars; and

(c) Including the following with the nomination:

1. DNA parentage verification;

2. Registration papers showing ownership and demonstrating that the horse was foaled in Kentucky;

3. An American Quarter Horse Association shipped semen report or a stallion breeders certificate demonstrating that the horse was bred in Kentucky; and

4. Mare pregnancy verification and care records from a licensed veterinarian showing that the dam was domiciled in Kentucky during the entirety of her pregnancy.

Section 6. Kentucky Quarter Horse Racing Association Stallion Auction. (1) A stallion not domiciled in Kentucky continuously from its first cover of the breeding season until its last cover of the breeding season shall become eligible to be registered with the KQHAADF if its ownership donates one (1) breeding season to the Kentucky Quarter Horse Racing Association Stallion Auction and that breeding season is sold at the auction. The eligibility shall pertain only to the year in which the breeding season is donated.

(2) A breeding season shall bring no less than fifty (50) percent of its advertised value in order to sell at the stallion auction.

(3) Any foal that is the result of breeding an eligible mare with a stallion that had a breeding season purchased through the Kentucky Quarter Horse Racing Association Stallion Auction Program shall be eligible to be nominated to the KQHAADF, if all other criteria described in this administrative regulation are satisfied.

Section 7. Compliance. (1) The commission shall be the official registrar for the KQHAADF.

(2) Questions as to eligibility, registration, nomination, or breeding of a Kentucky bred horse shall be decided exclusively by the commission.

(3) The commission may demand and inspect the records pertaining to any horse registered with or nominated to the KQHAADF and may conduct on-site visits to verify the domicile of **the[**~~any such~~**]** horse.

(4) Any person who knowingly fails to disclose or knowingly

falsifies any information required in the registration process for the KQHAADF may be disqualified and excluded from participation in the fund.

Section 8. Distribution of Funds. **(1) At least forty-five (45) days prior to the opening day of the live racing meet, each association offering quarter horse, appaloosa, or Arabian racing shall submit to the advisory committee established by Section 2 of this administrative regulation:**

(a) The conditions and rules for KQHAADF funded races for the upcoming year; and

(b) A plan for the distribution of funds for KQHAADF funded races for the upcoming year.

(2) The advisory committee shall review the proposed conditions, rules, and plan for distribution of funds for KQHAADF funded races and make a recommendation to the commission regarding approval based upon the best interests of Kentucky racing.

(3) At one (1) of its scheduled meetings, the commission shall, based upon the advice of the advisory committee:

(a) Approved the conditions and rules for the KQHAADF funded races;

(b) Approve the distribution of funds for KQHAADF funded races for the upcoming year; and

(c) Authorize expenditures at a time it designates.

(4) The racing dates for KQHAADF funded races shall be issued after the track has established its race dates.[~~(1) At a scheduled meeting of the commission, the commission shall, based upon the advice of the advisory committee established by Section 2 of this administrative regulation:~~

~~(a) Establish the distribution of funds for KQHAADF funded races for the upcoming year;~~

~~(b) Establish the conditions and rules for the KQHAADF funded races; and~~

~~(c) Authorize expenditures at a time it designates.~~

~~(2) The racing dates for KQHAADF funded races shall be issued after the track has established its race dates.~~**]**

Section **9.[**~~12.~~**]** Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Quarter Horse/Appaloosa/Arabian Stallion Registration", KHRC 190-1, 2/11;

(b) "Quarter Horse/Appaloosa/Arabian Broodmare Registration", KHRC 190-2, 5/11[~~2/11~~]; and

(c) "Quarter Horse/Appaloosa/Arabian Racing Stock Nomination", KHRC 190-3, 2/11.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material may also be obtained at the commission's Web site, www.khrc.ky.gov.

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

APPROVED BY AGENCY: May 13, 2011

FILED WITH LRC: May 13, 2011 at noon

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

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(As Amended at ARRS, June 14, 2011)

815 KAR 20:030. License application; qualifications for examination, examination requirements, expiration, renewal, revival or reinstatement of licenses.

RELATES TO: KRS 318.010, 318.020, 318.040, 318.050, 318.054

STATUTORY AUTHORITY: KRS 318.040(1)(d), (2), (3), 318.050, 318.054(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.040(1)(d) requires an applicant for a master or journeyman plumber's license to possess the qualifications established in KRS 318.040 and other qualifications prescribed by the commissioner[~~executive director~~]. KRS 318.040(2) and (3) require an applicant to successfully complete an examination prescribed by the Department[~~office~~]. KRS 318.050 requires the department[~~office~~] to establish reasonable application fees for licensure as a master or journeyman plumber. KRS 318.054(3) requires the department[~~office~~] to establish reasonable renewal fees for master or journeyman plumbers. This administrative regulation establishes the application and examination requirements and the application and renewal fees.

Section 1. Applications for Examination for Master or Journeyman Plumber's Licenses. (1) An application for examination for a master or journeyman plumber's license shall be submitted to the department[~~office~~] of Housing, Buildings and Construction on:

(a) Form PLB-1, Application for License as a Master Plumber; or

(b) Form PLB-2, Application for License as a Journeyman Plumber.

(2) The application shall:

(a) Be properly signed and notarized;

(b) Be accompanied by an examination fee of:

1. $150 to take the master plumber's examination; or

2. Fifty (50) dollars to take the journeyman plumber's examination; and

(c) Include a photograph of the applicant not less than two (2) inches square nor larger than four (4) inches square taken within two (2) years of submittal.

(3) The application fee shall be submitted at least two (2) weeks prior to the date of examination and remitted by post office or express money order, bank draft or certified check payable to the Kentucky State Treasurer.

(4) After passing the examination, an applicant for a master plumber's license shall remit a license fee of $250.

(5) After passing the examination, an applicant for a journeyman's license shall remit a license fee of sixty (60) dollars.

Section 2. Examinations for Master or Journeyman Plumber's Licenses. (1) Examination of applicants. Regular examination of applicants for a master or journeyman plumber's license shall be conducted during the months of February, May, August and November of each year. A special examination may be conducted at other times as the Department[~~Office~~] of Housing, Buildings and Construction directs.

(2) Time and place of examination. Notice of the time and place of examination shall be given by United States mail at least one (1) week prior to the date of examination to each person who has an application on file.

(3) Materials required for journeyman plumbers' examinations. An applicant for a journeyman plumber's license shall furnish the materials required for the practical examination, which are specified in the List of Required Examination Materials that is included as part of the application.

(4) The testing requirements shall be designed by the State Plumbing Examining Committee and shall be more complex for the master's examination than the journeyman's examination.

Section 3. Renewals of Master and Journeyman Plumber's Licenses. (1) Renewal fees. The annual license renewal fee shall be:

(a) $250 for a master plumber; and

(b) Sixty (60) dollars for a journeyman plumber.

(2) Continuing education. The continuing education requirements established in 815 KAR 20:032 shall be met.

(3) Inactive master renewal.

(a) To place the master plumber's license in inactive status, a master plumber shall pay annually an inactive fee of $125.

(b) An inactive master plumber shall not secure a plumbing permit, advertise, or represent himself as a qualified master plumber.

(c) To reactivate a master plumber license, the inactive master plumber shall pay an additional $125 and comply with the continuing education requirements established in 815 KAR 20:032.

(4) Remittance of renewal fees. A renewal fee shall be remitted by post office or express money order, bank draft, or certified check payable to the Kentucky State Treasurer.

Section 4. Requirements for Master Plumber Applicants. Pursuant to KRS 318.040(1)(d), each person shall meet the following requirements to become licensed as a master plumber:

(1)(a) An applicant shall have:

1. A valid journeyman plumber's license for a minimum of two (2) years within the past five (5) years immediately preceding application; and

2. Been actively employed in plumbing under the supervision of a licensed master plumber for a minimum of two (2) years; or

(b) The applicant shall be a Kentucky registered engineer experienced in mechanical engineering.

(2) An applicant shall successfully complete the examination developed and administered by the State Plumbing Examining Committee. The examination shall be designed to demonstrate that the applicant:

(a) Understands KRS Chapter 318 and 815 KAR Chapter 20;

(b) Is capable of the design of a plumbing system; and

(c) Understands the technical and practical installation techniques and principles for a safe and sanitary plumbing system.

(3) The examination shall include:

(a) Answering written questions pertaining to basic principles of plumbing and KRS Chapter 318 and 815 KAR Chapter 20; and

(b) Inserting the proper pipe size on a prepared drawing that indicates all stacks, wastes and vents and the plumbing fixtures connected thereto. The proper sizing of main stacks shall be given more importance than other piping. Deductions shall be required for oversized piping and for undersized piping.

(4) The passing grade for the total examination for a master plumber shall be eighty (80) percent, with a minimum of seventy-five (75) percent obtained for each portion of the examination established in subsection (3)(a) and (b) of this section.

Section 5. Requirements for Journeyman Plumber Applicants. Pursuant to KRS 318.040(1)(d), an applicant shall meet the following requirements to become licensed as a journeyman plumber:

(1) An applicant shall have completed two (2) consecutive years experience as an apprentice plumber.

(a) Proof of this requirement shall be satisfied by submission of:

1. A W-2 form;

2. An affidavit of a Kentucky licensed master plumber; or

3. A plumbing license issued by another state.

(b) **Completion of a committee approved course shall be deemed to be the equivalent of one (1) year of experience. An applicant may only substitute one (1) year of experience by completing a committee approved course.**

(c) Approved courses which satisfy the requirements of paragraph (b) shall be:

1. Plumbing Technology by the Kentucky Community and Technical College System; and

2. Plumbing Technology by Daymar College.[~~Completion of a two (2) year plumbing course or completion of a committee approved course consisting of one (1) calendar year but not less than forty-eight (48) quarter, credit hours shall be considered the equivalent of one (1) year of experience.~~**]**

(2) An applicant shall successfully complete the practical and written examination developed and administered by the State Plumbing Examining Committee. The examination shall be designed to demonstrate the practical and technical understanding of plumbing principles and the ability to apply those principles for a safe and sanitary plumbing system. The examination shall include:

(a) Answering written questions pertaining to basic principles of plumbing and KRS Chapter 318 and 815 KAR Chapter 20;

(b) Inserting the proper pipe size on a prepared drawing that indicates all stacks, wastes and vents and the plumbing fixtures connected thereto. The proper sizing of main stacks shall be given more importance than other piping. Deductions shall be required for oversized piping and for undersized piping; and

(c) Completing a practical section in which the applicant shall demonstrate the ability to properly install plumbing by engaging in certain activities such as properly installing a no hub cast-iron project and soldering copper solder connections.

(3) The passing grade for the total examination for a journeyman plumber shall be seventy-five (75) percent, with a minimum of seventy (70) percent obtained for each portion of the examination established in subsection (2)(a), (b), and (c) of this section.

Section 6. A master plumber or journeyman plumber shall notify the department[~~office~~] of the name of the plumber's business and its address, employer and the employer's address each time a change of employment is made.

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

(a) Form PLB-1, "Application for License as a Master Plumber",
October, 2007; and

(b) Form PLB-2, "Application for License as a Journeyman Plumber", October 2007.

(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.

JERRY T. LUNSFORD, Commissioner
ROBERT D VANCE, Secretary

APPROVED BY AGENCY: April 12, 2011

FILED WITH LRC: April 14, 2011 at 8 a.m.

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) 573-0365 ext. 144, fax (502) 573-1057.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy
(As Amended at ARRS, June 14, 2011)

900 KAR 6:030. Certificate of need expenditure minimums.

RELATES TO: KRS **216B.050, [**~~216B.010~~ **-]**216B.130, 216B.455, 216B.990(2)

STATUTORY AUTHORITY: KRS 194A.050(1), 216B.040(3)(a), 216B.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(3)(a) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations. KRS 216B.130 requires the cabinet to promulgate an administrative regulation to annually adjust expenditure minimums provided in KRS Chapter 216B. This administrative regulation provides for the adjustment of expenditure minimums for capital expenditures and major medical equipment.

Section 1. (1) The U.S. Department of Commerce, Bureau of Economic Analysis Price Indexes for Private Fixed Investment by Type shall be used in making annual adjustments to the expenditure minimums required by KRS 216B.130.

(2) The change in the price index for **the twelve (12) [**~~twenty-four (24)~~**]**[~~twelve (12)~~] month period ending December 31, **2009[**~~2010~~**]**[~~2008~~], represents **a 2.79 [**~~3.58~~**]**[~~0.90~~] percent decrease[~~increase~~].

Section 2. (1) The capital expenditure minimum established in KRS 216B.015(7) shall be **$2,669,775 [**~~$2,648,079~~**]**[~~$2,746,400~~].

(2) The major medical equipment minimum established in KRS 216B.015(16) shall be **$2,669,775 [**~~$2,648,079~~**]**[~~$2,746,400~~].

CARRIE BANAHAN, Executive Director
JANIE MILLER, Secretary

APPROVED BY AGENCY: April 10, 2011

FILED WITH LRC: April 12, 2011 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.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy
(As Amended at ARRS, June 14, 2011)

900 KAR 7:030. Data reporting by health care providers.

RELATES TO: KRS Chapter 13B, 216.2920-216.2929

STATUTORY AUTHORITY: KRS 216.2923(3), 216.2925

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216.2925 requires that the Cabinet for Health and Family Services promulgate administrative regulations requiring specified health care providers to provide the cabinet with data on cost, quality, and outcomes of health care services provided in the Commonwealth. KRS 216.2923(3) authorizes the cabinet to promulgate administrative regulations to impose fines for failure to report required data. This administrative regulation establishes the required data elements, forms, and timetables for submission of data to the cabinet and fines for noncompliance.

Section 1. Definitions. (1) "Agent" means any entity with which the cabinet may contract to carry out its statutory mandates, and which it may designate to act on behalf of the cabinet to collect, edit, or analyze data from providers.

(2) "Ambulatory facility" is defined by KRS 216.2920(1).

(3) "Cabinet" is defined by KRS 216.2920(2).

(4) "Coding and transmission specifications"**,** **[**~~or~~**]** "Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals**",** or **"**Kentucky Data Coordinator's Manual for Ambulatory Facilities" means the document containing the technical directives the cabinet issues concerning technical matters subject to frequent change, including codes and data for uniform provider entry into particular character positions and fields of the standard billing form and uniform provider formatting of fields and character positions for purposes of electronic data transmissions.

(5) "Hospital" is defined by KRS 216.2920(6).

(6) "Hospitalization" means the inpatient medical episode identified by a patient's admission date, length of stay, and discharge date, that is identified by a provider-assigned patient control number unique to that inpatient episode, except for**:**

(a) Inpatient services a hospital may provide in swing, nursing facility, skilled, intermediate or personal care beds**; or**

(b)[~~, and~~**]** Hospice care.

(7) "National Provider Identifier" or "NPI" means the unique identifier assigned by the Centers for Medicare and Medicaid Services to an individual or entity that provides health care services and supplies.

(8) "Outpatient services" means services performed on an outpatient basis in a hospital in accordance with Section 3(2) of this administrative regulation or services performed on an outpatient basis by an ambulatory facility in accordance with Section 4 of this administrative regulation.

(9) "Provider" means a hospital, ambulatory facility, clinic, or other entity of any nature providing hospitalizations, mammograms, or outpatient services as defined in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals or the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(10) "Record" means the documentation of a hospitalization or outpatient service in the format prescribed by the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals or the Kentucky Data Coordinator's Manual for Ambulatory Facilities as approved by the Statewide Data Advisory Committee on a computer readable electronic medium.

(11) "Standard Billing Form" means the uniform health insurance claim form pursuant to KRS 304.14-135, the Professional 837 (ASC X12N 837) format, the Institutional 837 (ASC X12N 837) format, or its successor as adopted by the Centers for Medicare and Medicaid Services, or the HCFA 1500 for use by hospitals and other providers in billing for hospitalizations and outpatient services.

Section 2. Medicare Provider-Based Entity. A licensed outpatient facility that is a Medicare provider-based entity of a hospital and reports under the hospital's provider number shall be separately identifiable through a facility-specific NPI.

Section 3. Data Collection for Hospitals. (1) Inpatient Hospitalization records. Hospitals shall document every hospitalization they provide on a Standard Billing Form and shall, from every record, copy and provide to the cabinet the data specified in Section 13 of this administrative regulation.

(2) Outpatient services records.

(a) Hospitals shall document on a Standard Billing Form the outpatient services**[**~~, as defined in Section 1 of this administrative regulation,~~**]** they provide and shall from every record, copy and provide to the cabinet the data specified in Section 13 of this administrative regulation.

(b) Hospitals shall submit records that contain the required outpatient services procedure codes specified in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals.

(3) Data collection on patients. Hospitals shall submit required data on every patient as provided in Section 13 of this administrative regulation, regardless of the patient's billing or payment status.

Section 4. Data Collection for Ambulatory Facilities. (1) Outpatient Services Records.

(a) Ambulatory facilities shall document on a Standard Billing Form the outpatient **services[**~~service, as defined in Section 1 of this administrative regulation,~~**]** they provide and shall, for every record, copy and provide to the cabinet the data specified in Section 14 of **this[**~~the~~**]** administrative regulation.

(b) Ambulatory facilities shall submit records that contain the required outpatient services procedure codes specified in the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(2) Data collection on patients. Ambulatory facilities shall submit required data on every patient as provided in Section 14 of this administrative regulation, regardless of the patient's billing or payment status.

Section 5. Data Finalization and Submission by Providers. (1) Submission of final data.

(a) Data shall be final for purposes of submission to the cabinet as soon as a record is sufficiently final that the provider could submit it to a payor for billing purposes, regardless of whether the record has actually been submitted to a payor.

(b) Finalized data shall not be withheld from submission to the cabinet on grounds that it remains subject to adjudication by a payor.

(c) Data on hospitalizations shall not be submitted to the cabinet before a patient is discharged and before the record is sufficiently final that it could be used for billing.

(2) Data submission responsibility.

(a) If a patient is served by a mobile health service, specialized medical technology service, or another situation where one (1) provider provides services under contract or other arrangement with another provider, responsibility for providing the specified data to the cabinet shall reside with the provider that bills for the service or would do so if a service is unbilled.

(b) Charges for physician services provided within a hospital shall be reported to the cabinet.

1. Responsibility for reporting the physician charge data shall rest with the hospital if the physician is an employee of the hospital.

2. A physician charge contained within a record generated by a hospital shall be clearly identified in a separate field within the record so that the cabinet may ensure comparability when aggregating data with other hospital records that do not contain physician charges.

(3) Transmission of records.

(a) Records submitted to the cabinet by hospitals shall be un-

iformly completed and formatted according to coding and transmission specifications set forth by the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals.

(b) Records submitted to the cabinet by ambulatory facilities shall be uniformly completed and formatted according to coding and transmission specifications set forth by the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(c) All providers shall submit records on computer-readable electronic media.

(d) Providers shall provide back-up security against accidental erasure or loss of the data until all incomplete or inaccurate records identified by the cabinet have been corrected and resubmitted.

(4) Verification and audit trail for electronic data submissions.

(a) Each provider shall maintain a date log of data submissions and the number of records contained in each submission, and shall make the log available for inspection upon request by the cabinet.

(b) The cabinet shall, within twenty-four (24) hours of submission, verify by electronic message to each provider the receipt of the provider's data transmissions and the number of records in each transmission.

(c) A provider shall immediately notify the cabinet of a discrepancy between the provider's date log and a verification notice.

Section 6. Data Submission Timetable for Providers. (1) Quarterly submissions. Providers shall submit data at least once for each calendar quarter. A quarterly submission shall:

(a) Contain data, which during that quarter became final as specified in Section 5(1) of this administrative regulation; and

(b) Be submitted to the cabinet not later than forty-five (45) days after the last day of the quarter.

1. If the 45th day falls on a weekend or holiday, the submission due date shall be the next working day.

2. Calendar quarters shall be January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31.

(2) Submissions more frequent than quarterly. Providers may submit data after records become final as specified in Section 5(1) of this administrative regulation and at a reasonable frequency convenient to a provider for accumulating and submitting batch data.

Section 7. Data Corrections for Hospitals. (1) Editing. Data received by the cabinet shall, upon receipt, be edited to ensure completeness and validity of the data. Computer editing routines shall identify for correction every record in which the submitted contents of required fields are not consistent with the cabinet's coding and transmission specifications contained in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals.

(2) Time permitted for corrections. The cabinet shall allow providers thirty (30) days in which to submit corrected copies of initially submitted data the cabinet identifies as incomplete or invalid as a result of edits.

(a) The thirty (30) days shall begin on the date of the cabinet's notice informing the provider that corrections are required.

(b) Providers shall submit corrected data by electronic transmission or postmarked mailing within thirty (30) days.

(c) Corrected data submitted to the cabinet shall be uniformly completed and formatted according to the cabinet's coding and transmission specifications contained in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals. **[**~~(d) The cabinet shall grant a provider an extension of time to submit corrections, if the provider has formally informed the cabinet of significant problems in performing the corrections and has formally requested, in writing, an extension of time beyond the thirty (30) day limit.~~**]**

(3) Percentage error rate.

(a) When editing data upon its initial submission, the cabinet shall identify and return to the provider for correction every record in which one (1) or more of the required data elements fails to pass the edit.

(b) When editing data that a provider has submitted, the cabinet shall check for an error rate per quarter of no more than one (1) percent of records or not more than ten (10) records, whichever is greater.

(c) The cabinet may return for further correction any submission of allegedly corrected data in which the provider fails to achieve a corrected error rate per quarter of no more than one (1) percent of records or not more than ten (10) records, whichever is greater.

(d) For the first data submission, the cabinet shall not count as errors any data for patients admitted prior to thirty (30) days of the effective date of this administrative regulation.

Section 8. Data Corrections for Ambulatory Facilities. (1) Editing. Data received by the cabinet shall, upon receipt, be edited to ensure completeness and validity of the data. Computer editing routines shall identify for correction every record in which the submitted contents of required fields are not consistent with the cabinet's coding and transmission specifications contained in the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(2) Time permitted for corrections. The cabinet shall allow providers thirty (30) days in which to submit corrected copies of initially submitted data the cabinet identifies as incomplete or invalid as a result of edits.

(a) The thirty (30) days shall begin on the date of the cabinet's notice informing the provider that corrections are required.

(b) Providers shall submit corrected data by electronic transmission or postmarked mailing within the thirty (30) days.

(c) Corrected data submitted to the cabinet shall be uniformly completed and formatted according to the cabinet's coding and transmission specifications contained in the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(d) The cabinet shall grant a provider an extension of time to submit corrections, if the provider has formally informed the cabinet of significant problems in performing the corrections and has formally requested, in writing, an extension of time beyond the thirty (30) day limit.

(3) Percentage error rate.

(a) When editing data upon its initial submission, the cabinet shall identify and return to the provider for correction every record in which one (1) or more of the required data elements fails to pass the edit.

(b) When editing data that a provider has submitted, the cabinet shall verify an error rate per quarter of no more than one (1) percent of records or not more than (10) records, whichever is greater.

(c) The cabinet may return for further correction any submission of allegedly corrected data in which the provider fails to achieve a corrected error rate per quarter of no more than one (1) percent of records or not more than ten (10) records, whichever is more.

Section 9. Fines for Noncompliance for Providers. (1) A provider failing to meet quarterly submission guidelines as established in Sections 6, 7, and 8 of this administrative regulation shall be assessed a fine of $500 per violation.

(2) The cabinet shall notify a noncompliant provider by certified mail, return receipt requested, of the documentation of the reporting deficiency and the assessment of the fine.

(3) A provider shall have thirty (30) days from the date of receipt of the notification letter to pay the fine which shall be made payable to the Kentucky State Treasurer and sent by certified mail to the Kentucky Cabinet for Health and Family Services, Office of Health Policy, 275 East Main Street 4 W-E, Frankfort, Kentucky 40621.

(4) Fines during a calendar year shall not exceed $1,500 per provider.

Section 10. Extension or Waiver of Data Submission Timelines. (1) Providers experiencing extenuating circumstances or hardships may request from the cabinet, in writing, a data submission extension or waiver.

(a) Providers shall request an extension or waiver from the Office of Health Policy on or before the last day of the data reporting period to receive an extension or waiver for that period.

(b) Extensions and waivers shall not exceed a continuous period of greater than six (6) months.

(2) The cabinet shall consider the following criteria in determin-

ing whether to grant an extension or waiver:

(a) Whether the request was made due to an event beyond the provider's control, such as a natural disaster, catastrophic event, or theft of necessary equipment or information;

(b) The severity of the event prompting the request; and

(c) Whether the provider continues to gather and submit the information necessary for billing.

(3) A provider shall not apply for more than three (3) extensions or waivers during a calendar year.

Section 11. Appeals for Providers. (1) A provider notified of its noncompliance and assessed a fine pursuant to Section 9(1) of this administrative regulation shall have the right to appeal within thirty (30) days of the date of the notification letter.

(a) If the provider believes the action by the cabinet is unfair, without reason, or unwarranted, and the provider wishes to appeal, it shall appeal in writing to the Secretary of the Cabinet for Health and Family Services, 5th Floor, 275 East Main Street, Frankfort, Kentucky 40621.

(b) Appeals shall be filed in accordance with KRS Chapter 13B.

(2) Upon receipt of the appeal, the secretary or designee shall issue a notice of hearing no later than twenty (20) days before the date of the hearing. The notice of the hearing shall comply with KRS 13B.050. The secretary shall appoint a hearing officer to conduct the hearing in accordance with KRS Chapter 13B.

(3) The hearing officer shall issue a recommendation in accordance with KRS 13B.110. Upon receipt of the recommended order, following consideration of any exceptions filed pursuant to KRS 13B.110(4), the secretary shall enter a final decision pursuant to KRS 13B.120.

Section 12. Working Contacts for Providers. (1) By January 1 of each calendar year, a provider shall report by letter to the cabinet the names and telephone numbers of a designated contact person and one (1) back-up person to facilitate technical follow-up in data reporting and submission.

(a) A provider's designated contact and back-up shall not be the chief executive officer unless no other person employed by the provider has the requisite technical expertise.

(b) The designated contact shall be the person responsible for review of the provider's data for accuracy prior to the publication by the cabinet.

(2) If the chief executive officer, designated contact person, or back-up person changes during the year, the name of the replacing person shall be reported immediately to the cabinet.

Section 13. Required Data Elements for Hospitals. (1) Hospitals shall ensure that each record submitted to the cabinet contains at least the **[**~~following~~**]** data elements **identified in this section and** as provided on the Standard Billing Form.

(2) Asterisks identify elements that shall not be blank and shall contain data or a code as specified in the cabinet's coding and transmission specifications contained in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals.

(3) Additional data elements, as specified in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals, shall be required by the cabinet to facilitate proper collection and identification of data.

Required	DATA ELEMENT LABEL
Yes	*Provider Assigned Patient Control Number
Yes	*Provider Assigned Medical Record Number
Yes	*Type of Bill (inpatient, outpatient or other)
Yes	*Federal Tax Number or Employer Identification Number (EIN)
Yes	*Facility-specific NPI
Yes	*Statement Covers Period
Yes	*Patient City and Zip Code
Yes	*Patient Birth date
Yes	*Patient Sex
Yes	*Admission/Start of Care Date
Yes	Admission Hour
Yes	*Type of Admission
Yes	*Source of Admission
Yes	*Patient Status (at end of service or discharge)
No	Occurrence Codes & Dates
No	Value Codes and Amounts, including birth weight in grams
Yes	*Revenue Codes/Groups
Yes	*HCPCS/Rates/Hipps Rate Codes
No	Units of Service
Yes	*Total Charges by Revenue Code Category
Yes	*Payor Identification - Payor Name
Yes	*National Provider Identifier
Yes	*Diagnosis Version Qualifier - ICD version 9.0 or 10.0
Yes	*Principal Diagnosis Code
No	Principal Diagnosis Code present on admission identifier for non-Medicare claims
Yes	*Principal Diagnosis Code present on admission identifier for Medicare claims
Yes	*Secondary and Other Diagnosis Codes if present
No	Secondary and Other Diagnosis code present on admission identifier if present for non-Medicare claims
Yes	*Secondary and Other Diagnosis code present on admission identifier if present for Medicare claims
No	Inpatient Admitting Diagnosis or Outpatient reason for visit
Yes	*External Cause of Injury Code (E-code) if present
No	External Cause of Injury (E-code) present on admission identifier on non-Medicare claims if present
Yes	*External Cause of Injury (E-code) present on admission identifier on Medicare claims if present
Yes	*Principal Procedure Code & Date if present
Yes	*Secondary and Other Procedure Codes & Date if present
Yes	*Attending Physician NPI/QUAL/ID
No	Operating Clinician ID Number/NPI
No	Other Physician NPI/QUAL/ID
Yes	*Race
Yes	*Ethnicity
Yes	*Procedure Coding Method

Section 14. Required Data Elements for Ambulatory Facilities. (1) Ambulatory facilities shall ensure that each record submitted to the cabinet contains at least the **[**~~following~~**]** data elements **identified in this section and** as provided on the Standard Billing Form.

(2) Asterisks identify elements that shall not be blank and shall contain data or a code as specified in the cabinet's coding and transmission specifications contained in the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(3) Additional data elements, as specified in **the** Kentucky Data Coordinator's Manual for Ambulatory Facilities, shall be required by the cabinet to facilitate proper collection and identification of data.

Required	DATA ELEMENT LABEL
Yes	*Patient Birth date
Yes	*Patient Sex
Yes	*Zip Code
Yes	*1st Individual Payer ID#
Yes	*Admission/Start of Care Date
Yes	*Type of Bill
Yes	*Principal Diagnosis Code
Yes	*Secondary and Other Diagnosis Codes if present
Yes	*Principal Procedure Code & Date
Yes	*Secondary and Other Procedure Codes & Date if present
Yes	*1st Units of Service
Yes	*1st Charge
No	Secondary and Other Units of Service and Charge
Yes	*Total Charges for the Case

Yes	*Attending Clinician NPI
Yes	*Provider Assigned Patient ID#
Yes	*1st Insurer Group #
No	2nd Insurer Group #
Yes	*Operating Clinician NPI
Yes	*Billing Facility-specific NPI
Yes	*Federal Tax Number or Employer Identification Number (EIN)
Yes	*Statement Covers Period
Yes	*Primary Payor Name
No	Secondary Payor Name
Yes	*Race
Yes	*Ethnicity
Yes	*HCPCS/Rates/Hipps Rate Codes

Section 15. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals", revised April 1, 2011[~~July 1, 2010~~]; and

(b) "Kentucky Data Coordinator's Manual for Ambulatory Facilities," revised April 1, 2011[~~July 1, 2010~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street 4WE, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

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 10, 2011
FILED WITH LRC: April 12, 2011 at 4 p.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 Medicaid Services
Division of Provider Operations
(As Amended at ARRS, June 14, 2011)

907 KAR 1:715. School-based health services.

RELATES TO: KRS 156.070, 205.520, 605.115, 314.470, 20 U.S.C. 33, 34 C.F.R. 300.320, 300.321, 300.324, 42 C.F.R. 440.110

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of Medicaid services to Kentucky's indigent citizenry. This administrative regulation establishes the provisions relating to school-based health services (SBHS) for which payment shall be made by the Medicaid Program on behalf of Medicaid recipients who are eligible for school-based health services under 20 U.S.C. Chapter 33.

Section 1. Definitions. (1) **"Advanced practice registered nurse" is defined by KRS 314.011(7).**

(2) "ARC" means an admissions and release committee [~~"Admissions and release committee" or "ARC" means a group of individuals~~**]** which meets the:

(a) ARC requirements established in 707 KAR 1:320; and

(b) IEP team requirements established in 34 C.F.R. 300.321. **[**~~(2) "Advanced registered nurse practitioner" is defined by KRS 314.011(7).~~**]**

(3) "Assistive technology device" means an item, piece of equipment, or product system that is:

(a) Used to increase, maintain, or improve the functional capabilities of a child with a disability; and

(b) Medically necessary to implement the health services in the child's individualized education program.

(4) "Board Certified Assistant Behavior Analyst" or "BCABA" means an individual who:

(a) Has met all of the BCABA requirements established by the Behavior Analyst Certification Board®, Inc.; and

(b) Is currently recognized by the Behavior Analyst Certification Board®, Inc. as a BCABA.

(5) "Board Certified Behavior Analyst" or "BCBA" means an individual who:

(a) Has met all of the BCABA requirements established by the Behavior Analyst Certification Board®, Inc.; and

(b) Is currently recognized by the Behavior Analyst Certification Board®, Inc. as a **BCBA [**~~BCABA~~**]**.

(6) "Certified psychologist" means an individual who holds the title of certified psychologist pursuant to KRS 319.056.

(7)[~~(5)~~] "Certified psychologist with autonomous functioning" means an individual who holds the title of certified psychologist with autonomous functioning pursuant to KRS 319.056.

(8)[~~(6)~~] "Certified social worker" means an individual with a certified social worker license pursuant to KRS 335.080.

(9)[~~(7)~~] "Department of Education" means the Commonwealth of Kentucky, Department of Education.

(10) **"Federal financial participation" is defined in 42 C.F.R. 400.203.**[~~(8)~~] **[**~~"IDEA" means the Individuals with Disabilities Education Act, 20 U.S.C. Chapter 33.~~**]**

(11)[~~(9)~~] "IEP team" is defined by 34 C.F.R. 300.321.

(12)[~~(10)~~] "Incidental interpreter services" means the interpreter services that are necessary to allow the child to benefit from other covered school-based health services.

(13)[~~(11)~~] "Individualized Education Program" or "IEP" is defined by 34 C.F.R. 300.320.

(14)[~~(12)~~] "Licensed clinical social worker" means an individual possessing a current licensed clinical social worker license pursuant to KRS 335.100.

(15)[~~(13)~~] "Licensed practical nurse" is defined by KRS 314.011(9).

(16)[~~(14)~~] "Licensed professional clinical counselor" is defined by KRS 335.500(3).

(17)[~~(15)~~] "Licensed professional **[**~~clinical~~**]** counselor associate" is defined by KRS 335.500(4).

(18)[~~(16)~~] "Licensed psychological associate" means an individual holding the title of licensed psychological associate pursuant to KRS 319.064.

(19)[~~(17)~~] "Licensed psychological practitioner" means an individual who meets the licensed psychological practitioner requirements established in KRS 319.053.

(20)[~~(18)~~] "Licensed psychologist" means a psychologist who holds a licensed psychologist license pursuant to KRS 319.010**(6)[**~~(5)~~**]**.

(21)[~~(19)~~] "Licensed social worker" means an individual possessing a current licensed social worker license pursuant to KRS 335.090.

(22)[~~(20)~~] "Occupational therapist" is defined by KRS **319A.010(3) [**~~319A.030(3)~~**]**.

(23)[~~(21)~~] "Occupational therapy assistant" is defined by KRS **319A.010(4) [**~~319A.030(4)~~**]**.

(24)[~~(22)~~] "Physical therapist" is defined by KRS 327.010(2).

(25)[~~(23)~~] "Physical therapist assistant" means an individual:

(a) With a current credential from the Kentucky Board of Physical Therapy; and

(b) Working under the supervision of a physical therapist.

(26)[~~(24)~~] "Psychologist" is defined by KRS 319.010**(9)[**~~(8)~~**]**.

(27)[~~(25)~~] "Recipient" is defined by KRS 205.8451(9).

(28)[~~(26)~~] "Registered nurse" is defined by KRS 314.011(5).

(29)[~~(27)~~] "Respiratory care practitioner" is defined by KRS 314A.010(3).

(30)[~~(28)~~] "SBHS" or "School-based health services" **[**~~or~~**]** means medically-necessary health services**:[**~~;~~**]**

(a) Provided for in 907 KAR 1:034; and

(b) Specified in an individualized education program for a child determined to be eligible under the provisions of the Individuals with Disabilities Education Act, 20 U.S.C. Chapter 33, and 707 KAR Chapter 1.

(31)[~~(29)~~] "SBHS recipient" means a recipient who:

(a) Is under the age of twenty-one (21) years; and

(b) Receives school-based health services.

(32)[~~(30)~~] "Special transportation" means a special arrangement, special equipment, or a special vehicle:

(a) Which is appropriate for the child's disability; and

(b) The need for which is described in the child's individualized education plan.

Section 2. Provider Requirements. (1) A school district that requests to participate as a school-based health care provider shall not be qualified to provide school-based health services:

(a) Until it has enrolled as a Medicaid provider pursuant to 907 KAR 1:672;

(b) Until it has been certified by the Department of Education to provide school-based health services; and

(c) Unless it is currently compliant with the Medicaid provider participation requirements established in 907 KAR 1:671.

(2) The Department of Education shall grant certification to a district that agrees to:

(a) Provide services as:

1. Required by 20 U.S.C. Chapter 33; and

2. Specified in an approved individualized education program developed by an ARC that includes a multidisciplinary team of professionals acting within their scope of practice;

(b) Comply with the service provision requirements mandated by 20 U.S.C. Chapter 33 and in accordance with 707 KAR 1:320;

(c) Employ or contract with health care professionals who meet the qualifications specified in Section 4 of this administrative regulation;

(d) Provide the Department of Education with a proposed quality assurance outline;

(e) Maintain and submit to the Department of Education all required records and reports to ensure compliance with 20 U.S.C. Chapter 33; and

(f) Provide the Department of Education with a list of school-based health services that the school district provides. This list shall contain the following information for employees and contractors providing the services:

1. Name; and

2. Credentials[~~;~~

~~3. Hourly salary;~~

~~4. Hourly fringe benefit costs; and~~

~~5. Hourly contract amounts~~].

(3) The Department for Medicaid Services shall grant Medicaid enrollment to a provider who:

(a) Meets the criteria established in subsections (1) and (2) of this section;

(b) Works within his or her scope of practice as established in Kentucky law; and

(c) Is recommended by the Department of Education for certification and enrollment in the Kentucky Medicaid Program as a provider of school-based health services.

(4) A Medicaid school-based health services provider shall:

(a) Submit to an annual review by the Department of Education to ensure compliance with the standards for continued participation as a Medicaid provider;

(b) Have an on-site survey completed by the Department of Education as necessary to determine compliance with the Medicaid Program;

(c) Take action as specified by the Department of Education to correct a deficiency if found to be in noncompliance with the provision of services outlined in 707 KAR 1:320 or this administrative regulation;

(d) Agree to implement a quality assurance program approved by the Department of Education for the provision of Medicaid-covered services within one (1) year from the date the Department of Education recommends enrollment to the Medicaid Program;

(e) Maintain a current list of school-based health services that the school district provides. The list shall contain the information listed in subsection (2)(f) of this section for an employee or contractor providing the services;

(f) Maintain records on each SBHS recipient who receives services reimbursed by Medicaid. The records shall:

1. Identify the child, services performed, and quantity or units of service;

2. Be signed and dated by the professional who provided or supervised the service;

3. Be legible with statements written in an objective manner;

4. Indicate progress being made, any change in treatment, and response to the treatment; and

5. Be retained for a minimum of five (5) years plus any additional time required by law; and

(g) Comply with 907 KAR 1:671 and 1:672.

Section 3. Covered Services. (1) A school-based health service that is included in an IEP authorized by an IEP team or ARC and provided in accordance with this administrative regulation shall:

(a) Be considered medically necessary; and

(b) Not be subject to additional Medicaid prior-authorization requirements.

(2) The following services shall be covered if provided to address a medical or mental disability and to assist an individual in benefiting from special education programming which is included, authorized, and provided in accordance with the individualized education program:

(a) Nursing;

(b) Audiology;

(c) Speech and language;

(d) Occupational therapy;

(e) Physical therapy;

(f) Behavioral health services[~~Mental health~~];

(g) Incidental interpreter services provided in conjunction with another covered service;

(h) Orientation and mobility services;

(i) Respiratory therapy;

(j) Assistive technology devices and appropriate related evaluations if the devices purchased by the Medicaid Program become the property of the SBHS recipient; and

(k) Special transportation with the following limitations:

1. A special transportation service shall be limited to transporting an SBHS recipient to receive a Medicaid-covered service at:

a. A site other than the school building in which the child is enrolled for general education purposes;

b. The child's home if the child is a home-bound student and receives general education services at home; or

c. The school building where the child receives the Medicaid-covered service. Special transportation to the school building from the child's home or other site and return special transportation from the school building to the child's home or other site shall be covered for the day the Medicaid-covered service is provided at the school building;

2. A special transportation service shall be provided using a type of vehicle which:

a. Meets the specifications established by KRS 156.153, 702 KAR 5:060, and 702 KAR 5:130; and

b. Is appropriate for the child's disability as determined by the ARC in accordance with 702 KAR 5:100; and

3. A special transportation service provided by a member of an SBHS recipient's household to the SBHS recipient shall not be covered unless the SBHS recipient's household member is an employee of the school district.

(3) A covered school-based health service:

(a) Shall not be limited by site of service;

(b) Shall be provided in:

1. A group of no more than six (6); or

2. In a one-on-one situation; and

(c) May include:

1. An assessment or evaluation if the assessment or evaluation is stated in the SBHS recipient's IEP, except as allowed in subsection (4) of this section; or

2. A treatment component if the treatment component is stated in the SBHS recipient's IEP.

(4) An assessment or evaluation conducted prior to the establishment of an individualized education program shall be covered if the individualized education program is subsequently developed and implemented as a result of the assessment or evaluation.

Section 4. Staffing Requirements. School-based health services shall be reimbursable if provided by a professional acting within his or her scope of practice as defined by state law and as provided in this section.

(1) A nursing service shall be provided by:

(a) An advanced **practice** registered nurse **[**~~practitioner with a current license from the Kentucky Board of Nursing~~**]**;

(b) A registered nurse; **[**~~1. With a current license from the Kentucky Board of Nursing; or~~

~~2. Authorized to provide a nursing service;~~**]**

(c) A licensed practical nurse**[**~~:~~

~~1. With a current license issued by the Kentucky Board of Nursing, under appropriate supervision and delegated authority; or~~

~~2. Authorized to provide a nursing service pursuant to KRS 314.470~~**]**; or

(d) A health aide if:

1. The aide is under the supervision of a specific registered nurse or advanced **practice** registered nurse **[**~~practitioner~~**]**;

2. The supervising registered nurse or advanced **practice** registered nurse **[**~~practitioner~~**]** has trained the aide for the specific SBHS nursing service for the specific recipient; and

3. The supervising registered nurse or advanced **practice** registered nurse **[**~~practitioner~~**]** has verified in writing that the aide has appropriate training and skills to perform the specific service in a safe, effective manner.

(2) Audiology services shall be provided by an audiologist with a current license from the Kentucky Board of Speech-Language Pathology and Audiology.

(3) Speech and language services shall be provided by[~~:~~

~~(a)~~] a speech-language pathologist who has a current certificate of clinical competence issued by the American Speech **and Hearing**[~~-Language-Hearing~~**]** Association[~~:~~

~~1. Has a current license from the Kentucky Board of Speech-Language Pathology and Audiology;~~

~~2. Has a master's level professional certification issued by the Kentucky Education Professional Standards Board after January 1, 2001; or~~

~~3. Has a certificate of clinical competence issued by the American Speech-Language-Hearing Association; or~~

~~4. Is working under the supervision of an individual who:~~

~~a. Has a current license from the Kentucky Board of Speech-Language Pathology and Audiology;~~

~~b. Has a master's level professional certification issued by the Kentucky Education Professional Standards Board after January 1, 2001; or~~

~~c. Has a certificate of clinical competence issued by the American Speech-Language-Hearing Association; or~~

~~(b) A speech-language pathology assistant who:~~

~~1. Has:~~

~~a. A current license from the Kentucky Board of Speech-Language Pathology and Audiology; or~~

~~b. A baccalaureate-level certification issued by the Kentucky Educational Professional Standards Board; and~~

~~2. Is under the supervision of a licensed or certified masters-level speech-language pathologist in accordance with KRS 334A.033, 334A.080, and 161.053~~].

(4) Occupational therapy services shall be provided by:

(a) An occupational therapist:

(b) An occupational therapy assistant; or

(c) An unlicensed occupational therapy aide who:

1. Provides supportive services to occupational therapists and occupational therapy assistants; and

2. Is under the direct supervision of **an** **[**~~a licensed~~**]** occupational therapist.

(5) Physical therapy services shall be provided by:

(a) A physical therapist;

(b) A physical therapist assistant;

(c) An individual with a temporary permit to perform physical therapy in Kentucky pursuant to **KRS** 327.010(5);

(d) A student of physical therapy under the supervision of a physical therapist; or

(e) Physical therapy supportive personnel under the direct on-site supervision of a:

1. Physical therapist; or

2. Physical therapist assistant in accordance with the provisions of 201 KAR 22:053.

(6) A behavioral[~~mental~~] health service shall be provided by:

(a) A licensed psychologist;

(b) A licensed psychological practitioner;

(c) A certified psychologist with autonomous functioning;

(d) A certified psychologist;

(e) A licensed psychological associate;

(f) A licensed clinical social worker;

(g) A licensed social worker;

(h) A certified social worker;

(i) An advanced **practice** registered nurse **[**~~practitioner~~**]** who has a specialty area in accordance with the American Nurses' Association's Scope and Standards of Psychiatric-Mental Health Nursing Practice in accordance with 201 KAR 20:057;

(j) A licensed professional clinical counselor;[~~or~~]

(k) A licensed professional **[**~~clinical~~**]** counselor associate;

(l) A board certified behavior analyst; or

(m) A board certified assistant behavior analyst.

(7) An incidental interpreter service shall be provided by an interpreter licensed by the Kentucky Board of Interpreters for the Deaf and Hard of Hearing pursuant to KRS **309.312 or 309.314** **[**~~309.301~~**]**.

(8) Orientation and mobility services shall be provided by an orientation and mobility specialist certified by the:

(a) Academy for Certification of Vision Rehabilitation and Education Professionals (ACVREP); or

(b) National Blindness Professional Certification Board (NBPCB).

(9) Respiratory therapy services shall be provided by a respiratory care practitioner.

Section 5. Reimbursement. (1) Reimbursement for SBHS shall be provided in accordance with the school-based health service reimbursement provisions established in 907 KAR 1:035.

(2) A school-based health services provider shall certify the expenditure of state or local funds for school-based health services in accordance with 702 KAR 3:285.

Section 6. Individualized Education Program. An IEP shall:

(1) Be developed, reviewed, and revised in accordance with:

(a) 707 KAR 1:320; and

(b) 34 C.F.R. 300.324; and

(2) Not be considered authorized unless it has been approved by an IEP team.

Section 7. Federal financial participation. A policy established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:

(1) Denies federal financial participation for the policy; or

(2) Disapproves the policy.

NEVILLE WISE, Acting Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: May 10, 2011

FILED WITH LRC: May 11, 2011 at Noon

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.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR RECEIPT OF WRITTEN COMMENTS

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division for Air Quality
(Amended After Comments)

401 KAR 51:052. Review of new sources in or impacting upon nonattainment areas.

RELATES TO: KRS 224.20-100(5), 224.20-110, 224.20-120, 40 C.F.R. Part 51 Appendix S, Part 51 Subpart I[~~1~~], 51.165, 51.166, 51.300, 51.307, 52.21, 60, 61, 70.6, Part 81[~~,~~] Subpart D, 81.318, 42 U.S.C. 7401-7671q[~~, EO 2009-538~~]

STATUTORY AUTHORITY: KRS 224.10-100(5), 42 U.S.C. 7401-7671q[~~, EO 2009-538~~]

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.~~] This administrative regulation establishes requirements for the construction or modification of stationary sources within, or impacting upon, areas where the national ambient air quality standards have not been attained. The provisions of this administrative regulation are not [~~neither different nor~~] more stringent than the federal regulation. 40 C.F.R. 51.165.

Section 1. Applicability. This administrative regulation shall apply to the construction of a new major stationary source or a project that is a major modification at an existing major stationary source, which commences construction after September 22, 1982, and locates in or impacts upon an area designated nonattainment under 42 U.S.C. 7407(d)(1)(A)(i).

(1) The provisions of this administrative regulation relating to visibility protection shall also apply to major sources or major modifications in nonattainment areas that potentially have an impact on visibility in a mandatory Class I federal area.

(2) Applicability tests for projects. Except as provided in subsection (3) of this section, a project shall be a major modification for a regulated NSR pollutant only if the project causes a significant emissions increase and a significant net emissions increase, as provided in paragraphs (a) and (b) of this subsection.

(a) Prior to beginning actual construction, the owner or operator shall first determine if a significant emissions increase will occur for the applicable type of unit being constructed or modified according to subparagraphs 1 to 3 of this paragraph.

1. Actual-to-projected actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant shall be projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions for each existing emissions unit equals or exceeds the significant amount for that pollutant.

2. Actual-to-potential test for projects that involve only construction of new emissions units. A significant emissions increase of a regulated NSR pollutant shall be projected to occur if the sum of the potential to emit from each new emissions unit following completion of the project equals or exceeds the significant amount for that pollutant.

3. Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant shall be projected to occur if the sum of the emissions increases for each emissions unit, using the methods specified in subparagraphs 1 and 2 of this paragraph as applicable for each emissions unit, equals or exceeds the significant amount for that pollutant.

(b) Prior to beginning actual construction and after completing the applicable test in paragraph (a) of this subsection, the owner or operator shall determine for each regulated NSR pollutant if a significant net emissions increase will occur pursuant to 401 KAR 51:001, Section 1(144) and (218).

(3) For a plant-wide applicability limit (PAL) for a regulated NSR pollutant at a major stationary source, the owner or operator of the major stationary source shall comply with the applicable requirements of Section 11 of this administrative regulation.

Section 2. Initial Screening Analyses and Determination of Applicable Requirements. (1) Review of all sources for emissions limitation compliance.

(a) The cabinet shall examine each proposed major new source and proposed major modification to determine if the source or modification will meet all applicable emissions requirements in the Kentucky State Implementation Plan (SIP) and 40 C.F.R. Parts 60 and 61.

(b) If the cabinet determine~~s~~ from the application and all other available information that the proposed source or modification will not meet the applicable emissions requirements, the permit to construct shall be denied.

(2) Review of specified sources of air quality impact.

(a) The cabinet shall determine if a proposed major stationary source or major modification will be constructed in an area designated as nonattainment pursuant to 42 U.S.C. 7407(d)(1)(A)(i) for a pollutant for which the stationary source or modification is major.

(b) If a designated nonattainment area is projected to be an attainment area as part of an approved control strategy by the new source start-up date, offsets shall not be required if the new source will not cause a new violation.

(3) Fugitive emissions sources. Sections 4 and 10 of this administrative regulation shall not apply to a source or modification that will be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to one (1) of the following categories:

(a) Coal cleaning plants with thermal dryers;
(b) Kraft pulp mills;
(c) Portland cement plants;
(d) Primary zinc smelters;
(e) Iron and steel mills;
(f) Primary aluminum ore reduction plants;
(g) Primary copper smelters;
(h) Municipal incinerators capable of charging more than 250 tons of refuse per day;
(i) Hydrofluoric, sulfuric, or nitric acid plants;
(j) Petroleum refineries;
(k) Lime plants;
(l) Phosphate rock processing plants;
(m) Coke oven batteries;
(n) Sulfur recovery plants;
(o) Carbon black plants, furnace process;
(p) Primary lead smelters;
(q) Fuel conversion plants;
(r) Sintering plants;
(s) Secondary metal production plants;
(t) Chemical process plants, except ethanol production facilities producing ethanol by natural fermentation under the North American Industry Classification System (NAICS) codes 325193 or 312140;
(u) Fossil-fuel boilers, or combination of fossil-fuel boilers, totaling more than 250 million BTUs per hour heat input;
(v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
(w) Taconite ore processing plants;
(x) Glass fiber processing plants;
(y) Charcoal production plants;
(z) Fossil fuel-fired steam electric plants of more than 250 million BTUs per hour heat input; or
(aa) Another stationary source category that, as of August 7, 1980, is being regulated under 42 U.S.C. 7411 or 7412.

Section 3. Sources Locating in Designated Attainment or Unclassifiable Areas that Will Cause or Contribute to a Violation of a National Ambient Air Quality Standard. (1) This section shall apply

only to new major stationary sources or new major modifications that will locate in designated attainment or unclassifiable areas, pursuant to 42 U.S.C. 7407(d)(1)(A)(ii) or (iii), if the source or modification will cause impacts that exceed the significance levels, as listed in the table in this subsection, at a locality that does not or will not meet the national ambient air quality standards.

Pollutant	Annual Average	Averaging Time			
		24-Hour	8-Hour	3-Hour	1-Hour
Sulfur Dioxide	1.0 $\mu g/m^3$	5 $\mu g/m^3$	--	25 $\mu g/m^3$	--
PM_{10}	1.0 $\mu g/m^3$	5 $\mu g/m^3$	--	--	--
Nitrogen Dioxide	1.0 $\mu g/m^3$	--	--	--	--
Carbon Monoxide	--	--	0.5 mg/m^3	--	2 mg/m^3

(2) Sources to which this section applies shall meet the requirements in Section 4(1), (2) and (4) of this administrative regulation and may be exempt from Section 4(3) of this administrative regulation.

(3) For sources of sulfur dioxide (SO_2), particulate matter, and carbon monoxide (CO), the determination that a new major source or major modification will cause or contribute to a violation of a national ambient air quality standard shall be made on a case-by-case basis using the source's allowable emissions in an approved atmospheric simulation model listed in 40 C.F.R. Part 51, Appendix W, "Guideline on Air Quality Models".

(4) For sources of NOx, the initial determination that a new major source or major modification will cause or contribute to a violation of the national ambient air quality standard for nitrogen dioxide (NO_2) shall be made using an approved atmospheric simulation model assuming all the nitric oxide emitted is oxidized to NO_2 by the time the plume reaches ground level. The initial concentration estimates may be adjusted if adequate data are available to account for the expected oxidation rate.

(5) For ozone, sources of VOCs or NOx locating outside a designated ozone nonattainment area shall be presumed to not have a significant impact on the designated nonattainment area. If ambient monitoring indicates that the area of source location is in fact nonattainment, the source shall be permitted pursuant to this administrative regulation and 401 KAR 52:020 until the area is designated nonattainment pursuant to 42 U.S.C. 7407(d)(1)(A)(i).

(6) The determination that a new major source or major modification will cause or contribute to a violation of a national ambient air quality standard shall be made as of the start-up date.

(7) Applications for major new sources and major modifications locating in attainment or unclassifiable areas, the operation of which will cause a new violation of a national ambient air quality standard but will not contribute to an existing violation, may be approved only if the following conditions are met:

(a) The new source shall:

1. Meet an emissions limitation;

2. Meet a design, operational, or equipment standard; or

3. Control existing sources so that the new source will not cause a violation of a national ambient air quality standard.

(b) The new emissions limitations for the new and existing sources affected shall be state and federally enforceable in accordance with Section 6 of this administrative regulation.

Section 4. Sources Locating in a Designated Nonattainment Area. This section shall apply to a new major stationary source or major modification that will be constructed in an area designated as nonattainment pursuant to 42 U.S.C. 7407(d)(1)(A)(i) for a pollutant for which the stationary source or modification is major. Approval to construct may be granted only if the conditions of this section are met.

(1) The new major source or major modification shall be required to meet an emissions limitation that specifies the lowest achievable emissions rate (LAER) for the source.

(2) The applicant shall demonstrate that all existing major sources owned or operated by the applicant, or an entity controlling, controlled by, or under common control with the applicant, in the Commonwealth of Kentucky are in compliance with all applicable emissions limitations and standards specified in Title 401, Chapters 50 to 65, and 40 C.F.R. Parts 60 and 61 and 42 U.S.C. 7401-7626, or are in compliance with an expeditious state and federally enforceable compliance schedule or a court decree establishing a compliance schedule.

(3)(a) Except for VOCs or NOx emissions, emissions from existing sources in the affected area of the proposed new major source or modification, whether or not under the same ownership, shall be reduced or offset <u>at a ratio of at least 1:1</u>, so that there will be reasonable further progress toward attainment of the applicable national ambient air quality standard (NAAQS). Only those transactions in which the emissions being offset are from the same criteria pollutant category shall be accepted.

(b) The ratio of total emissions reductions of VOCs or NOx to total increased emissions of the same air pollutant shall be at least the ratio indicated for the following ozone nonattainment area classifications:

1. For marginal nonattainment areas, at least 1.1 to 1;

2. For moderate nonattainment areas, at least 1.15 to 1;

3. For serious nonattainment areas, at least 1.2 to 1;

4. For severe nonattainment areas, at least 1.3 to 1; and

5. For extreme nonattainment areas, at least 1.5 to 1.

(4) The emissions reductions shall provide a positive net air quality benefit in the affected area.

(a) Atmospheric simulation modeling shall not be required for VOCs and NOx.

(b) Except as provided in Section 3(5) of this administrative regulation, compliance with subsection (3) of this section and Section 5(3)(e) of this administrative regulation shall be adequate to meet this condition.

(5) The proposed major stationary source or major modification shall include in the application for a construction permit an analysis of the alternative sites, sizes, production processes, and environmental control techniques for the proposed source, which demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

Section 5. Determining Credit for Emissions Offsets. (1) The baseline for determining credit for emissions reductions or offsets shall be, considering that baseline actual emissions as defined in 401 KAR 51:001, Section 1(20), shall not be used for determining the baseline for emissions offsets:

(a) The emissions limitations in effect when the application to construct or modify a source is filed; or

(b) The actual emissions of the source from which offset credit is attained if:

1. The demonstration of reasonable further progress and attainment of ambient air quality standards for the SIP was based on actual emissions; or

2. The SIP does not contain an emissions limitation for that source or source category.

(2) Credit for emissions offsets. Credit for emissions offset purposes may be allowed for existing control if the existing control goes beyond the control required under 401 KAR Chapters 50 to 65 and applicable federal regulations.

(3) General provisions for calculating offset values.

(a) Offset calculations shall be made on a pound-per-hour basis if all facilities involved in the emissions offset calculations are operating at their maximum or allowed production rate.

(b) Offsets may be calculated on a tons-per-year basis if baseline emissions for existing sources providing the offsets are calculated using the actual annual operating hours for the previous two (2) year period.

(c) If the cabinet requires certain hardware controls instead of an emissions limitation, baseline allowable emissions shall be based on actual operating conditions for the previous two (2) year period in conjunction with the required hardware controls.

(d) If the emissions limitations required by the cabinet allow greater emissions than the uncontrolled emissions rate of the source, emissions offset credit shall be allowed only for control below the uncontrolled emissions rate.

(e) The owner or operator of a new or modified major statio-

nary source shall comply with any offset requirement in effect under this administrative regulation to increase emissions of an air pollutant by obtaining emissions reductions of the air pollutant from:

1. [~~Obtaining emissions reductions of the air pollutant from~~] The same source or other sources in the same nonattainment area; or

2. A source[~~From sources~~] in another nonattainment area if:

a. The other area has an equal or higher nonattainment classification than the area in which the source is located; and

b. Emissions from the other area contribute to a violation of the national ambient air quality standard in the nonattainment area in which the source is located.

(4) Calculating offsets if an applicable emissions limitation does not exist. If the Kentucky SIP does not contain an emissions limitation for a source or source category, the emissions offset baseline involving the source shall be actual emissions determined under actual operating conditions for the previous two (2) year period.

(5) Calculating offsets for existing fuel combustion sources.

(a) The emissions for determining emissions offset credit involving an existing fuel combustion source shall be the allowable emissions under the emissions limitation requirements of the cabinet for the type of fuel being burned when the new major source or major modification application is filed.

(b) If the existing source has switched to a different type of fuel at some earlier date, a resulting emissions reduction, either actual or allowable, shall not be used for emissions offset credit.

(c) If the existing source commits to switch to a cleaner fuel at some future date, emissions offset credit based on the allowable emissions for the fuels involved shall not be allowed unless the permit is conditioned to require the use of a specified alternative control measure that will achieve the same degree of emissions reduction if the source switches back to a dirtier fuel at some later date.

(6) Calculating offsets for operating hours and source shutdowns.

(a) A source may be credited with emissions reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below baseline levels if the work force to be affected has been notified in writing of the proposed shutdown or curtailment.

(b) Emissions reductions achieved by shutting down an existing emissions unit or curtailing production or operating hours:

1. May be generally credited for offsets pursuant to 40 C.F.R. 51.165(a)(3)(ii)(C)(1) if:

a. The reductions are surplus, permanent, quantifiable, and federally enforceable; and

b. The shutdown or curtailment occurred after the last day of the base year for the SIP planning process.

(i) The cabinet may consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop an attainment demonstration explicitly includes the emissions from the previously shutdown or curtailed emission unit, pursuant to 40 C.F.R. 51.165(a)(3)(ii)(C)(1)(ii).

(ii) Credit shall not be given for a shutdown that occurred before August 7, 1977;

2. That do not meet the requirements of subparagraph 1.b. of this paragraph may be generally credited pursuant to 40 C.F.R. 51.165(a)(3)(ii)(C)(2) if:

a. The shutdown or curtailment occurred on or after the date the construction permit application is filed; or

b. The applicant establishes that the proposed new emissions unit is a replacement for the shutdown or curtailed emissions unit and the emissions reductions achieved by the shutdown or curtailment meet the requirements of subparagraph 1.a. of this paragraph. [~~Source shutdowns and curtailments in production or operating hours occurring prior to the date the new source application is filed shall not be used for emissions offset credit.~~] **[**~~(c) If an applicant establishes~~**]** [~~can establish~~] **[**~~that it shut down or curtailed production after August 7, 1977, or less than one (1) year prior to the date of permit application, whichever is earlier, and the proposed new source is a replacement for the shutdown or curtailment, credit for the shutdown or curtailment may be applied to offset emissions from the new source.~~**]**

(7) Calculating offsets for hydrocarbon substitution. An emissions offset credit shall not be allowed for replacing one volatile organic compound with another of lesser photochemical reactivity, unless the replacement compound is methane, ethane, 1,1,1-trichloroethane, or trichlorofluoroethane.

(8) Banking of emissions offset credit.

(a) New sources obtaining permits by applying offsets after the effective date of this administrative regulation may bank offsets that exceed the requirements of Section 5(3) of this administrative regulation.

(b) An owner or operator of an existing source that reduces its own emissions may bank a resulting reduction beyond those required by regulation for use under this administrative regulation, even if the offsets are applied immediately to a new source permit.

(c) Banked emissions offsets may be used under the preconstruction review program required in 42 U.S.C. 7401 to 7626, as long as these banked emissions are identified and accounted for in Kentucky's control strategy.

(9) Offset credit for meeting NSPS or NESHAPS.

(a) If a source is subject to an emissions limitation established in a New Source Performance Standard (NSPS) or a National Emissions Standard for Hazardous Air Pollutants (NESHAPS) and a different emissions limitation is required by the cabinet, the more stringent limitation shall be used as the baseline for determining credit for emissions offsets.

(b) The difference in emissions between NSPS or NESHAPS and other emissions limitations shall not be used as offset credit.

Section 6. Administrative Procedures for Emissions Offsets. (1) Emission reductions shall be enforceable by the cabinet and the U.S. EPA, and shall be accomplished by the start-up date of the new source.

(a) If emissions reductions are to be obtained in a state that neighbors the Commonwealth for a new source to be located in the Commonwealth, the emissions reductions shall be enforceable by the neighboring state or local agencies and the U.S. EPA.

(b) The necessary emissions offsets may be proposed by the owner of the proposed source or by the cabinet.

(2) Source initiated emissions offsets.

(a) The owner or operator of a source may propose:

1. Internal emissions offsets, which involve reductions from sources controlled by the owner; or

2. External emissions offsets, which involve reductions from other sources, if the emissions offsets meet the requirements of this section and Section 4(3) of this administrative regulation.

(b) An internal emissions offset shall be included and made enforceable as a condition of the source's permit.

(c) An external emissions offset shall only be accepted if the cabinet requires the affected source to comply with a new emissions limitation to ensure that its emissions shall be reduced by a specified amount in a specified time; and the new emissions limitation shall be enforceable by the cabinet and the U.S. EPA.

(3) Cabinet initiated emissions offsets.

(a) The cabinet may commit to reducing emissions from mobile sources and other existing sources to provide a net air quality benefit in the impact area of a proposed new source to accommodate the proposed new source.

(b) This emissions reduction commitment shall be reflected in the emissions limitation requirements for the new and existing sources as required by this section.

Section 7. Source Obligation. (1) An owner or operator of a source or modification subject to this administrative regulation shall construct and operate the source or modification in accordance with the application submitted to the cabinet under this administrative regulation and 401 KAR 52:020 or under the terms of an approval to construct.

(2)(a) Approval to construct shall become invalid if construction:

1. Is not commenced within eighteen (18) months after receipt of the approval;

2. Is discontinued for a period of eighteen (18) months or more;

or

3. Is not completed within a reasonable time.

(b) The cabinet may extend the eighteen (18) month period upon a satisfactory demonstration that an extension is justified.

1. An extension shall not apply to the time period between construction of the approved phases of a phased construction project; and

2. Each phase shall commence construction within eighteen (18) months of the projected and approved commencement date.

(3) Approval to construct shall not relieve an owner or operator of the responsibility to comply fully with applicable provisions of 401 KAR Chapters 50 to 65 and other applicable requirements under local, state, or federal law.

(4) If a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in an enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, the requirements of this administrative regulation shall apply to the source or modification as though construction had not yet commenced on the source or modification.

(5)(a) The provisions of this subsection shall apply to projects at existing emissions units at a major stationary source other than projects at a source with a PAL, if:

1. There is a reasonable possibility that a project that is not part of a major modification may result in a significant emissions increase; and

2. The owner or operator uses the method specified in 401 KAR 51:001, Section 1(199)(b) to calculate projected actual emissions.

(b) Before beginning actual construction of a project specified in paragraph (a) of this subsection, the owner or operator shall document and maintain a record of the following information:

1. A description of the project;

2. Identification of the emissions units for which emissions of a regulated NSR pollutant may be affected by the project; and

3. A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including:

a. Baseline actual emissions;

b. Projected actual emissions;

c. Amount of emissions excluded in calculating projected actual emissions and an explanation for why that amount was excluded; and

d. Any applicable netting calculations.

(c) For a project specified in paragraph (a) of this subsection, the owner or operator shall:

1. Monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that are emitted by an emissions unit identified in paragraph (a)2 of this subsection; and

2. Calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for:

a. Five (5) years following resumption of regular operations after the change; or

b. Ten (10) years if the project increases the design capacity of or potential to emit for that regulated NSR pollutant at the emissions unit.

(d) If the unit is an existing EUSGU, before beginning actual construction, the owner or operator:

1. Shall provide a copy of the information in paragraph (b) of this subsection to the cabinet; and

2. Shall not be required to obtain a determination from the cabinet before beginning actual construction; and

3. Shall submit a report to the cabinet within sixty (60) days after the end of each year during which records are required to be generated under paragraph (b) of this subsection that contains the unit's annual emissions during the calendar year preceding report submittal.

(e)1. For an existing unit other than an EUSGU, the owner or operator shall submit a report to the cabinet if:

a. The annual emissions, in tons per year, from a project identified in paragraph (a) of this subsection exceed the baseline actual emissions, as documented and maintained pursuant to paragraph (b)3 of this subsection, by a significant amount for that regulated NSR pollutant; and

b. The emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph (b)3 of this subsection.

2. The report shall be submitted to the cabinet within sixty (60) days after the end of the year during which records are required to be generated under paragraph (b) of this subsection and shall contain the following:

a. The name, address, and telephone number of the major stationary source;

b. The annual emissions as calculated pursuant to paragraph (c) of this subsection; and

c. Any other information that the owner or operator wishes to include in the report.

(f) The owner or operator of the source shall make the information required to be documented and maintained under this subsection available for review upon request for inspection by the cabinet or the general public pursuant to 401 KAR 52:100.

Section 8. Permit Condition Rescission. (1) An owner or operator holding a permit for a stationary source or modification that was issued pursuant to 401 KAR 51:050 or 51:051E may request that the cabinet rescind the applicable conditions.

(2) The cabinet shall rescind a permit condition if the owner or operator:

(a) Requests and demonstrates to the satisfaction of the cabinet that this administrative regulation does not apply to the source or modification or to a portion of the source or modification if construction will have commenced after September 22, 1982; and

(b) Demonstrates that the rescission will not violate the requirements of Sections 4(3) and 7 of this administrative regulation.

Section 9. Class I Areas. (1) The following areas, which were in existence on August 7, 1977, shall be Class I areas and shall not be redesignated:

(a) International parks;

(b) National wilderness areas and national memorial parks which exceed 5,000 acres in size; and

(c) National parks that exceed 6,000 acres in size.

(2) Any other area, unless otherwise specified in the legislation creating the area, is designated Class II but may be redesignated as provided in 40 C.F.R. 51.166(g).

(3) The visibility protection requirements of this administrative regulation shall apply only to sources that may impact a mandatory Class I federal area.

(4) The following areas may be redesignated only as Class I or II:

(a) An area which as of August 7, 1977, exceeded 10,000 acres in size and was a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore; and

(b) A national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size.

Section 10. Protection of Visibility. (1) New source review; applicability and exemptions.

(a) A stationary source or modification to which this section applies shall not begin actual construction without a permit that states the stationary source or modification shall meet the requirements of this section.

(b) This section shall apply to construction of a new major stationary source or major modification that will be constructed in an area designated as nonattainment under 42 U.S.C. 7407(d)(1)(A)(i) and potentially have an impact on visibility in a Class I area.

(c) This section shall apply to a major stationary source or major modification for each pollutant subject to regulation under 42 U.S.C. 7401 to 7626 that it will emit, except as provided in paragraphs (d) and (e) of this subsection.

(d) This section shall not apply to a particular major stationary source or major modification if:

1. The source or modification is a nonprofit health or nonprofit educational institution or a major modification will occur at the institution, and the Governor of the Commonwealth requests that it be exempt from the requirements of this section; and

2. The source is a portable stationary source that has previously received a permit under this section and will be temporarily relocated; and

(a) The emissions from the source will not exceed the allowable emissions;

b. The emissions from the source will not impact a Class I area or an area where an applicable increment is known to be violated; and

c. Reasonable notice is given to the cabinet prior to the relocation, identifying the proposed new location and the probable duration of operation at the new location. The notice shall be given to the cabinet not less than ten (10) days in advance of the proposed relocation unless a different time duration is previously approved by the cabinet pursuant to this section.

(e) This section shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification:

1. Will not impact a Class I area;

2. Will not impact an area where an applicable increment is known to be violated; and

3. Will be temporary.

(2) Visibility impact analyses. The owner or operator of a source shall provide an analysis of the impairment to visibility that will occur in a Class I area as a result of the source or modification and general commercial, residential, industrial, and other growth associated with the source or modification.

(3) Federal land manager notification.

(a) The federal land manager and the federal official charged with direct responsibility for management of Class I areas shall have an affirmative responsibility to protect the visibility and other air quality related values of the Class I lands and to consider, in consultation with the cabinet, if a proposed source or modification will have an adverse impact on these values.

(b) The cabinet shall provide written notification to all affected federal land managers and to the federal official charged with direct responsibility for management of lands within the Class I area of a permit application or an advanced notice of a permit application for a proposed new major stationary source or major modification that may affect visibility in a Class I area. The notification shall:

1. Include a copy of all information relevant to the permit application;

2. Be submitted pursuant to this paragraph within thirty (30) days of receipt of the permit application or advanced notice of permit application and at least sixty (60) days prior to a public hearing on the application for a permit to construct; and

3. Include an analysis of the proposed source's anticipated impacts on visibility in a Class I area.

(c)1. The cabinet shall consider an analysis by the federal land manager, provided within thirty (30) days of the notification and analysis required by paragraph (b) of this subsection, that the proposed new major stationary source or major modification may have an adverse impact on visibility in a Class I area.

2. If the cabinet finds that the analysis does not demonstrate, to the satisfaction of the cabinet, that an adverse impact on visibility will result in the Class I area, the cabinet shall, in the public hearing notice required in 401 KAR 52:100, either explain that decision or give notice as to where the explanation may[~~can~~] be obtained.

(d) Adverse impact on visibility as it applies to paragraph (c) of this subsection shall be determined on a case-by-case basis, taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairments, and how these factors correlate with the times of visitor use of the Class I area, and the frequency and time of natural conditions that reduce visibility.

(4) Public participation. The cabinet shall follow the applicable procedures of 401 KAR 52:100 in processing applications under this section and shall follow the procedures at 40 C.F.R. 52.21(r), effective July 1, 2009, to the extent that the procedures of 401 KAR 52:100 do not apply.

(5) National visibility goal.

(a) The cabinet shall only issue permits to those sources for which emissions will be consistent with making reasonable progress toward the national goal of preventing future, and remedying existing, impairment of visibility in Class I areas which impairment results from manmade air pollution.

(b) In making the decision to issue a permit, the cabinet shall consider:

1. The costs of compliance;

2. The time necessary for compliance;

3. The energy and non-air quality environmental impacts of compliance; and

4. The useful life of the source.

(6) Monitoring.

(a) The cabinet may require monitoring of visibility in a Class I area near the proposed new stationary source or major modification using human observations, teleradiometers, photographic cameras, nephelometers, fine particulate monitors, or other appropriate methods as specified by the U.S. EPA.

(b) The monitoring method selected shall be determined on a case-by-case basis by the cabinet.

(c) The cabinet shall not undertake visibility monitoring in a Class I area without the approval of the federal land manager.

(d) Data obtained from visibility monitoring shall be made available to the cabinet, the federal land manager, and the U.S. EPA, upon request.

Section 11. Plant-wide Applicability Limit Provisions. The cabinet may approve the use of an actuals PAL (PAL) for an existing major stationary source if the PAL meets the requirements of this section.

(1) General provisions.

(a) An owner or operator may execute a project without triggering major NSR, if the source maintains its total source-wide emissions below the PAL level, meets the requirements in this section, and complies with the PAL permit. If these conditions are met, a project:

1. Shall not be considered a major modification for the PAL pollutant;

2. Shall not have to be approved through Kentucky's major NSR program; and

3. Shall not be subject to the provisions of Section 7(4) of this administrative regulation concerning restrictions on relaxing enforceable emissions limitations that the major stationary source used to avoid applicability of the major NSR program.

(b) Except as provided under subparagraph (1)(a)3 of this section, the major stationary source shall continue to comply with all applicable federal or state requirements, emissions limitations, and work practice requirements that were established prior to the effective date of the PAL.

(c) The cabinet shall not allow a PAL for VOC or NOx for any major stationary source located in an extreme ozone nonattainment area.

(2) Permit application requirements. The owner or operator of a major stationary source shall submit the following information to the cabinet for approval as part of an application for a permit or permit revision requesting a PAL:

(a) A list of all emissions units at the source designated as small, significant or major, based on their potential to emit;

(b) Identification of the federal and state applicable requirements, emissions limitations, and work practice requirements that apply to each emissions unit;

(c) Calculations of the baseline actual emissions for the emissions units with supporting documentation; and

(d) The calculation procedures the owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total for each month as required by subsection (12)(a) of this section.

(3) Establishing a PAL. The cabinet shall establish a PAL at a major stationary source in a federally enforceable permit pursuant to the requirements of this section.

(a) The PAL shall impose an annual emissions limitation in tons per year that is enforceable as a practical matter for the entire major stationary source, in which:

1. For each month during the PAL effective period after the first twelve (12) months of establishing a PAL, the owner or operator shall demonstrate that the sum of the monthly emissions from each emissions unit under the PAL for the previous twelve (12) consecu-

tive months is less than the PAL as a twelve (12) month average, rolled monthly; and

2. For each month during the first eleven (11) months from the PAL effective date, the owner or operator shall demonstrate that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL;

(b) The PAL shall be established in a PAL permit that:

1. Meets the public participation requirements in subsection (4) of this section; and

2. Contains all the requirements of subsection (6) of this section;

(c) A PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source;

(d) Each PAL shall regulate emissions of only one (1) pollutant;

(e) Each PAL shall have a PAL effective period of ten (10) years;

(f) The owner or operator of a major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements of subsections (11) to (13) of this section for each emissions unit under the PAL through the PAL effective period; and

(g) Emissions reductions of a PAL pollutant that occur during the PAL effective period shall not be creditable as decreases for offsets under 40 C.F.R. 51.165(a)(3)(ii), unless:

1. The level of the PAL is reduced by the amount of the emissions reductions; and

2. The reductions would be creditable in the absence of the PAL.

(4) Public participation requirements. PALs for existing major stationary sources shall be established, renewed, or increased pursuant to this subsection and the applicable procedures of 401 KAR 52:100 for issuing permits or permit revisions. The cabinet shall:

(a) Provide the public with notice of the proposed approval of a PAL permit with at least a thirty (30) day period for submittal of public comment; and

(b) Address all material comments before taking final action on a PAL permit or permit revision.

(5) Setting the ten (10) year PAL level.

(a) The PAL level for a major stationary source shall be the sum of the baseline actual emissions of the PAL pollutant for each emissions unit at the source during the chosen twenty-four (24) month period plus the applicable significant level for the PAL pollutant under the definition for "significant" in 401 KAR 51:001, Section 1 or under 42 U.S.C. 7401-7671q, whichever is lower.

(b) In establishing a PAL level for a PAL pollutant, only one (1) consecutive twenty-four (24) month period shall be used to determine the baseline actual emissions for all existing emissions units.

(c) A different consecutive twenty-four (24) month period may be used for each different PAL pollutant.

(d) Emissions associated with units that were permanently shut down after the chosen twenty-four (24) month period shall be subtracted from the PAL level.

(e) Emissions from units for which actual construction began after the twenty-four (24) month period shall be added to the PAL level in an amount equal to the potential to emit of the units.

(f) The cabinet shall specify a reduced PAL level in the PAL permit to become effective on the future compliance date of any applicable federal or state regulatory requirement that the cabinet is aware of prior to issuance of the PAL permit.

(6) Contents of the PAL permit. The PAL permit shall contain the following information:

(a) The PAL pollutant and the applicable source-wide emissions limitation in tons per year;

(b) The PAL permit effective date and the expiration date of the PAL or PAL effective period;

(c) Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL under subsection (9) of this section before the end of the PAL effective period, the PAL shall remain in effect until a revised PAL permit is issued by the cabinet;

(d) A requirement that emissions calculations for compliance purposes include emissions from startups, shutdowns, and malfunctions;

(e) A requirement that, once the PAL expires, the major stationary source shall be subject to the requirements of subsection (8) of this section;

(f) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total for each month as required by subsection (12)(a) of this section;

(g) A requirement that the major stationary source owner or operator shall monitor all emissions units in accordance with the provisions in subsection (12) of this section;

(h) A requirement that the owner or operator shall retain the records required under subsection (12) of this section on site. Records may be retained in an electronic format;

(i) A requirement for the owner or operator to submit, by the reports required under subsection (13) of this section by the required deadlines; and

(j) Any requirements necessary to implement and enforce the PAL.

(7) PAL effective period and reopening of a PAL permit.

(a) A PAL effective period shall be ten (10) years.

(b) The cabinet shall reopen a PAL permit to:

1. Correct typographical or calculation errors made in setting the PAL;

2. Reflect a more accurate determination of emissions used to establish the PAL;

3. Reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under 40 C.F.R. 51.165(a)(3)(ii); or

4. Revise the PAL to reflect an increase in the PAL according to subsection (10) of this section.

(c) The cabinet may reopen the PAL permit, during the PAL effective period, to:

1. Reduce the PAL to reflect newly applicable federal requirements with compliance dates after the PAL effective date;

2. Reduce the PAL consistent with any other requirement:

a. That is enforceable as a practical matter; and

b. That may be imposed on the major stationary source under the SIP; and

3. Reduce the PAL if the cabinet determines that a reduction is necessary to avoid causing or contributing to:

a. A National Ambient Air Quality Standard (NAAQS) or PSD increment violation; or

b. An adverse impact on visibility or another air quality related value that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

(d) All permit reopenings shall be carried out under the public participation requirements of subsection (4) of this section except for permit reopenings to correct typographical or calculation of errors that do not increase the PAL level.

(8) Expiration of a PAL. A PAL that is not renewed shall expire at the end of the PAL effective period and the requirements of this subsection shall then apply.

(a) Each emissions unit, or each group of emissions units, that existed under the PAL shall comply with an allowable emissions limitation under a revised permit established as follows:

1. An owner or operator of a major stationary source using a PAL shall submit a proposed allowable emissions limitation for each emissions unit, or each group of emissions units, by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL.

a. This proposal shall be submitted to the cabinet at least six (6) months before the expiration of the PAL permit but not sooner than eighteen (18) months before permit expiration.

b. If the PAL has not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under subsection (9)(e) of this section, distribution of allowable emissions shall be made as if the PAL has been adjusted.

2. The cabinet shall provide the date and procedure the owner or operator shall use to distribute the PAL allowable emissions.

3. The cabinet shall issue a revised permit incorporating allow-

able limits for each emissions unit, or each group of emissions units, as the cabinet determines is appropriate.

(b) Each emissions unit shall comply with the allowable emissions limitation on a twelve (12) month rolling basis. The cabinet may approve the use of monitoring systems other than CEMS, CERMS, PEMS, or CPMS if the alternate monitoring system demonstrates compliance with the allowable emissions limitation.

(c) The source shall continue to comply with a source-wide, multiunit emissions cap equivalent to the level of the PAL emissions limitation until the cabinet issues the revised permit incorporating allowable limits for each emissions unit or each group of emissions units.

(d) A major modification at the major stationary source shall be subject to major NSR requirements.

(e) The major stationary source owner or operator shall continue to comply with any state or federal applicable requirements eliminated by the PAL that applied during or before the PAL effective period, except for those emissions limitations established pursuant to Section 7(4) of this administrative regulation.

(9) Renewal of a PAL.

(a) Public participation requirements.

1. The cabinet shall follow the public participation procedures specified in subsection (4) of this section in approving a request to renew a PAL for a major stationary source.

2. The cabinet shall provide a written rationale for the proposed PAL level for public review and comment.

3. Any person may propose a PAL level for the source for consideration by the cabinet during the public review period.

(b) Application deadline.

1. A major stationary source owner or operator shall submit an application for renewal of a PAL at least six (6) months before the date of permit expiration but not earlier than eighteen (18) months before permit expiration.

2. The deadline for application submittal shall ensure that the permit shall not expire before the permit is renewed.

3. If a complete application for renewal is submitted within the timeframe specified in subparagraph 1 of this paragraph, the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

(c) Application requirements. The application to renew a PAL permit shall contain:

1. The information required in subsection (2) of this section;

2. A proposed PAL level;

3. The sum of the potential to emit of all emissions units under the PAL with supporting documentation; and

4. Any other information the owner or operator wishes the cabinet to consider in determining the appropriate level to renew the PAL.

(d) PAL adjustment.

1. A PAL shall not exceed the source's potential to emit. The cabinet shall adjust the PAL downward to a level not greater than the potential to emit if a source's potential to emit has declined below the PAL level.

2. The cabinet may renew the PAL at the same level as the current PAL without considering the factors specified in subparagraph 3 of this section, if the emissions level calculated according to subsection (5) of this section is equal to or greater than eighty (80) percent of the PAL level; or

3. The cabinet may set the PAL at a level that is determined to be:

a. More representative of the source's baseline actual emissions; or

b. Appropriate considering the following factors:

(i) Air quality needs;

(ii) Advances in control technology;

(iii) Anticipated economic growth in the area of the source;

(iv) The cabinet's goal of promoting voluntary emissions reductions; or

(v) Other factors as specifically identified by the cabinet in its written rationale for setting the PAL level.

4. The cabinet shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of subsection (10) of this section.

(e) The PAL shall be adjusted in conjunction with the PAL permit renewal or Title V permit renewal, whichever comes first, if:

1. The compliance date for a state or federal applicable requirement that applies to the PAL source occurs during the PAL effective period; and

2. The cabinet has not already adjusted for the requirement.

(10) Increasing a PAL during the PAL effective period. The cabinet may increase a PAL emissions limitation during the PAL effective period if the major stationary source complies with the provisions of this subsection.

(a) Application procedures. To request an increase in the PAL limit for a PAL major modification, the owner or operator of the major stationary source shall submit a complete application, which shall include:

1. Identification of the emissions units contributing to the increase in emissions for the PAL major modification;

2. Demonstration that increased PAL, as calculated in paragraph (c) of this subsection exceeds the PAL, and:

a. The level of control that results from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis when the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding ten (10) years.

b. If an emissions unit currently complies with BACT or LAER, the assumed control level for that emissions unit shall be equal to the current level of BACT or LAER for that emissions unit; and

3. A statement that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(b) NSR permit and compliance requirement. The owner or operator shall obtain a major NSR permit for all emissions units contributing to the increase in emissions for the PAL major modification.

1. A significant level shall not apply in deciding for which emissions units a major NSR permit shall be obtained; and

2. Emissions units that obtain a major NSR permit shall comply with any emissions requirements resulting from the major NSR process, even though the units shall also become subject to the PAL or shall continue to be subject to the PAL.

(c) Calculation of increased PAL. The cabinet shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the baseline actual emissions of the small emissions units.

(d) Public notice requirement. The public notice requirements of subsection (4) of this section shall be followed during PAL permit revision for an increased PAL level.

(11) Monitoring requirements for PALs.

(a) General requirements.

1. Each PAL permit shall contain enforceable requirements for the chosen monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time;

2. A monitoring system authorized for use in the PAL permit shall be:

a. Approved by the cabinet pursuant to this subsection; and

b. Based on sound science and meet generally-acceptable scientific procedures for data quality and manipulation;

3. The data generated by a monitoring system shall meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit;

4. The PAL monitoring system shall employ one (1) or more of the four (4) general monitoring approaches meeting the minimum requirements set forth in paragraph (b) of this subsection;

5. The cabinet may approve an alternative monitoring approach that meets the requirements of subparagraphs 1 to 3 of this paragraph; and

6. Failure to use a monitoring system that meets the requirements of this section shall render the PAL invalid.

(b) Minimum performance requirements for approved monitoring approaches. If conducted in accordance with the minimum requirements in paragraphs (c) to (i) of this subsection, the following shall be acceptable monitoring approaches:

1. Mass balance calculations for activities using coatings or solvents;

2. CEMS;

3. CPMS or PEMS; and

4. Emissions factors.

(c) Mass balance calculations. An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coatings or solvents shall:

1. Provide a demonstrated means of validating the published content of the PAL pollutant contained in or created by all materials used in or at the emissions unit;

2. If it cannot be accounted for in the process, assume that the emissions unit emits all of the PAL pollutant contained in or created by any raw material or fuel used in or at the emissions unit; and

3. If the vendor of the material or fuel from which the pollutant originates publishes a range, use the highest value of the published range of pollutant content to calculate the PAL pollutant emissions, unless the cabinet determines there is site-specific data or a site-specific monitoring program to support another pollutant content within the range.

(d) CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

1. CEMS shall comply with applicable Performance Specifications found in 40 C.F.R. Part 60, Appendix A; and

2. CEMS shall sample, analyze, and record data at least every fifteen (15) minutes while the emissions unit is operating.

(e) CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

1. The CPMS or the PEMS shall be based on current site-specific data demonstrating a correlation between the monitored parameter and the PAL pollutant emissions across the range of operation of the emissions unit; and

2. While the unit is operating, each CPMS or PEMS shall sample, analyze, and record data at least every fifteen (15) minutes, or at another less frequent interval approved by the cabinet.

(f) Emissions factors. An owner or operator using emissions factors to monitor PAL pollutant emissions shall meet the following requirements:

1. All emissions factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

2. The emissions unit shall operate within the designated range of use for the emissions factor, if applicable; and

3. The owner or operator of a significant emissions unit that relies on an emissions factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emissions factor within six (6) months of PAL permit issuance if the cabinet determines that the testing is required and technically practicable.

(g) A source owner or operator shall record and report maximum potential emissions without considering enforceable emissions limitations or operational restrictions for an emissions unit during any period of time there is no monitoring data, unless another method for determining emissions during the periods is specified in the PAL permit.

(h) If an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameters and the PAL pollutant emissions rate at all operating points of the emissions unit, as an alternative to the requirements in paragraphs (c) to (g) of this subsection, in conjunction with permit issuance the cabinet shall:

1. Establish default values for determining compliance with the PAL based on the highest potential emissions reasonably estimated at operating points if a correlation cannot be demonstrated; or

2. If there is not a correlation between monitored parameters and the PAL pollutant emissions, determine that operation of the emissions unit during operating conditions is a violation of the PAL.

(i) Revalidation. All data used to establish the PAL pollutant shall be revalidated through performance testing or other scientifically valid means approved by the cabinet. Validation testing shall occur at least once every five (5) years after issuance of the PAL.

(12) Recordkeeping requirements.

(a) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of this section and of the PAL, including a determination of each emissions unit's twelve (12) month rolling total emissions for five (5) years from the date of the determination.

(b) The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus five (5) years:

1. A copy of the PAL permit application and any applications for revisions to the PAL; and

2. Each annual certification of compliance pursuant to Title V and the data used to certify the compliance.

(13) Reporting and notification requirements. The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the cabinet in accordance with 401 KAR Chapter 52 that meet the following requirements:

(a) Semiannual report. The semiannual report shall be submitted to the cabinet within thirty (30) days of the end of each reporting period and shall contain:

1. The identification of owner and operator and the permit number;

2. Total annual emissions, in tpy, based on a twelve (12) month rolling total for each month in the reporting period recorded pursuant to subsection (12)(a) of this section;

3. All data used in calculating the monthly and annual PAL pollutant emissions, including any quality assurance or quality control data;

4. A list of any emissions units modified or added to the major stationary source during the preceding six (6) month period;

5. The number, duration, and cause of any deviations or monitoring malfunctions, other than the time associated with zero and span calibration checks, and any corrective action following a deviation;

6. A notification of permanent or temporary shutdown of any monitoring system including:

a. The reason for the shutdown;

b. The anticipated date that the monitoring system shall be fully operational or shall be replaced with another monitoring system;

c. If applicable, a statement that the emissions unit monitored by the monitoring system continued to operate without the monitoring system; and

d. The calculation of the emissions of the pollutant or the number determined according to subsection (11)(g) of this section that is included in the permit; and

7. A signed statement by the responsible official, as defined by 401 KAR 51:001, Section 1(210), certifying the truth, accuracy, and completeness of the information provided in the semiannual report.

(b) Deviation report. The major stationary source owner or operator shall submit reports of any deviation or exceedance of the PAL requirements, including periods monitoring is unavailable.

1. A report submitted pursuant to 40 C.F.R. 70.6(a)(3)(iii)(B) shall satisfy this deviation reporting requirement;

2. The deviation report shall be submitted within the time limits prescribed by the applicable program implementing 40 C.F.R. 70.6(a)(3)(iii)(B);

3. The deviation report shall contain the following information:

a. The identification of the owner, the operator, and the permit number;

b. The PAL requirement that experienced the deviation or that was exceeded;

c. Emissions resulting from the deviation or the exceedance; and

d. A signed statement by the responsible official, as defined by 401 KAR 51:001, Section 1(210), certifying the truth, accuracy, and completeness of the information provided in the report.

(c) Revalidation results. The owner or operator shall submit to the cabinet the results of any revalidation test or method within three (3) months after completion of the test or method.

(14) Transition requirements.

(a) After the U.S. EPA approves the Kentucky SIP revisions for the PAL provisions published at 67 Fed. Reg. 80186, December 31, 2002, the cabinet shall only issue a PAL that complies with the requirements of this section.

(b) The cabinet may supersede a PAL that was established

before August 10, 2006, with a PAL that complies with the requirements of this administrative regulation.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: June 8, 2011

FILED WITH LRC: June 9, 2011 at 2 p.m.

CONTACT PERSON: Laura Lund, Environmental Technologist II, Division for Air Quality, 1st Floor, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3999, ext. 4428, fax (502) 564-4666, e-mail Laura_Lund@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Laura Lund, Environmental Technologist II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes air quality permitting requirements for the construction or modification of major stationary sources located within, or impacting upon, areas where the national ambient air quality standards have not been demonstrated to be attained.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that the addition of stationary source emissions will not contribute significantly to Kentucky's achievement of reasonable further progress of a national ambient air quality standard for an area currently not attaining that standard. This administrative regulation provides for economic growth in a nonattainment area without impeding Kentucky's progress towards cleaner air and attainment of the applicable national ambient air quality standards.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(5) requires the Cabinet to provide for the prevention, abatement, and control of air pollution. 42 U.S.C 7503 requires air quality permits issued to sources located or impacting a nonattainment area to include provisions for the attainment of the national primary ambient air quality standards and reasonable further progress of the air quality, which are contained in this administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the requirements for issuing permits to stationary sources in areas where the national ambient air quality standards have not been attained.

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

(a) How the amendment will change this existing administrative regulation: This amendment allows emissions reductions from source shutdowns and curtailments in production or operating hours to be used as emissions offset credits for new construction projects, even if the permit application for the new construction is received after the emissions reductions have occurred. The current regulation only allows for emission offset credits if a permit application is received before a source shutdown or curtailment.

(b) The necessity of the amendment to this administrative regulation:

This amendment is necessary for consistency between the state regulation and corresponding federal regulation; thereby eliminating regulatory uncertainty for sources located in Kentucky. This amendment also eliminates the economic disadvantage that sources locating in Kentucky would have compared to sources in surrounding states by allowing the use of emissions reductions resulting from shutdowns or a curtailment occurring before the permit application is filed.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.10-100(5) requires the Cabinet to provide for the prevention, abatement, and control of air pollution. 42 U.S.C 7503 requires that permits issued in a nonattainment area contain provisions for the attainment of the national primary ambient air quality standards and reasonable further progress of the air quality, which are contained in this administrative regulation.

How the amendment will assist in the effective administration of statutes: This amendment eliminates regulatory uncertainty by amending the administrative regulation to be consistent with the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This administrative regulation affects individuals, businesses, organizations, and state and local governments in Kentucky that are constructing or modifying major stationary sources that are within, or that impact upon, areas where the national ambient air quality standards have not been attained. This regulation does not affect sources in Jefferson County, which is regulated under the Louisville Metro Air Pollution Control District. There are currently 6 counties in Kentucky (not including Jefferson County) classified as nonattainment for the 1997 annual particulate matter national ambient air quality standard (Boone, Boyd, Bullitt, Campbell, Kenton, a portion of Lawrence).

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

(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 further action by the regulated community is required to comply with this regulation amendment. This amendment allows emissions from a shutdown or curtailment that occurred prior to the filing of a new application to be used as emissions offsets.

(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 involved in compliance with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Sources may be able to take credit for emissions reductions that were not creditable prior to this amendment. This amendment also eliminates the regulatory uncertainty due to the inconsistency between state and federal law. In addition, this amendment removes the disadvantage for economic development in areas of nonattainment by allowing the use of emissions reductions as offsets for shutdowns or curtailments occurring before a permit application for a new project is filed.

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

(a) Initially: The Cabinet will not incur any additional costs for the implementation of this regulation.

(b) On a continuing basis: There will not be any additional continuing costs for the implementation of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Cabinet's current operating budget will be used for the implementation and enforcement of this regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This regulation does not establish, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes. The applicability of this administrative regulation is tiered, dependent on emission thresholds of stationary sources and the classification of ozone nonattainment areas.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 7401-7626, specifically 7407(d), 7410, and 7501-7514a., provides the statutory mandate as promulgated in 40 C.F.R. 51.165.

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 governing nonattainment New Source Review requires sources subject to this regulation to demonstrate that any construction or modification of a major stationary source will not cause a net increase in air pollution; that emissions resulting from the project will not create a delay in attainment of the

national ambient air quality standards; and that the source will install and use control technology that achieves the lowest achievable emissions rate (LAER). The Clean Air Act is the federal mandate that requires states to possess a plan for the attainment of the national primary ambient air quality standards and reasonable further progress of the air quality. 40 C.F.R. 51.165 is the federal rule that provides authority for the Cabinet to establish a plan and promulgate administrative regulation requirements to ensure compliance.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This regulation is no more stringent than the federal rule, codified in 40 C.F.R. 51.165, and no more stringent than the federal mandate established by 42 U.S.C. 7401-7626.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? 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 Division for Air Quality will continue to implement and enforce the New Source Review (NSR) program. Also, state and local governments constructing or modifying a major stationary source in, or impacting upon, an area where the national ambient air quality standards have not been attained 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 224.10-100(5), 40 C.F.R. 51.165, and 42 U.S.C. 7401-7671q.

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

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

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

(c) How much will it cost to administer this program for the first year? The Cabinet's existing operating budget continues as the source of funding for the implementation of this program.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs for administering the program in subsequent years.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

PUBLIC PROTECTION CABINET
Department of Insurance
Financial Standards and Examination Division
(Amended After Comments)

806 KAR 3:170. Annual audited financial reports.

RELATES TO: KRS 304.1-050, 304.2-065, 304.2-210-304.2-290, 304.3-120, 304.3-125, 304.3-240, 304.3-241, 304.17A-820, 304.32-210, 304.35-040, 304.37-010, 304.37-020, 304.36-140, 304.42-150, 304.45-030, 304.45-040, 304.48-110, 304.49-070(2), 304.49-080, 304.49-090, **304.50-060,** 304.50-075, 18 U.S.C. 1961, 1968

STATUTORY AUTHORITY: KRS 304.2-110, 304.3-240, 304.49-140

NECESSITY, FUNCTION, AND CONFORMITY:[~~EO 2008-507, signed June 6, 2008, and effective June 16, 2008, created the Department of Insurance headed by a Commissioner.~~] KRS 304.2-110 authorizes the Commissioner of the Department[~~Executive Director~~] 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 304.3-240 authorizes the commissioner to promulgate administrative regulations concerning the publication of financial statements. KRS 304-49-140 authorizes the commissioner to promulgate administrative regulations relating to captive insurance companies that are necessary to enable the commissioner to carry out the provisions of KRS 304.39-010 to 304.49-230. This administrative regulation establishes requirements concerning the annual filing of audited financial reports by insurers.**

Section 1. Definitions. (1)**(a) "Accountant" and "independent certified public accountant" mean an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and in all states in which they are licensed to practice.**

(b) For Canadian and British insurers, "accountant" means a Canadian-chartered or British-chartered accountant. [~~"Accountant":~~

~~(a) and "independent certified public accountant" mean an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and in all states in which they are licensed to practice; and~~

~~(b) for Canadian and British insurers, mean a Canadian-chartered or British-chartered accountant.~~]

(2) "Affiliate" or "affiliated" **is defined by KRS 304.37-010(4).** [~~means a person that directly, or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.~~]

(3) "Audit Committee" means a committee, or equivalent body, established by the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of an insurer or group of insurers and audits of financial statements of the insurer or group of insurers.

(4) "Audited financial report" means those items specified in Section 4 of this administrative regulation.

(5) "Commissioner" is defined in KRS 304.1-050(1)[~~means the Commissioner of the Department of Insurance~~].

(6) "Controlling person" is defined in KRS 304.37-010(8).

(7) "Department" is defined in KRS 304.1-050(2)[~~means Department of Insurance~~].

(8) "Group of Insurers" means those licensed insurers included in the reporting requirements of KRS 304.37-020, or a set of insurers as identified by management, for the purpose of assessing the effectiveness of internal control over financial reporting.

(9) "Insurer" **is defined by KRS 304.1-040.** [~~means an insurer authorized to do business in Kentucky by the commissioner.~~]

(10) "Internal control over financial reporting" means a process **affected**[~~effected~~] by an entity's board of directors, management, and other personnel designed to provide reasonable assurance regarding the reliability of the financial statements and includes those policies and procedures that:

(a) Pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets;

(b) Provide reasonable assurance that transactions are recorded as necessary to permit preparation of the financial statements and that receipts and expenditures are being made only in accordance with authorizations of management and directors; and

(c) Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of assets that could have a material effect on the financial statements.

(11) "SEC" means the United States Securities and Exchange Commission.

(12) "Section 404" means Section 404 of the Sarbanes-Oxley Act of 2002 and the SEC's rules and regulations promulgated under Section 404.

(13) "Section 404 Report" means management's report on "internal control over financial reporting" as defined by the SEC and the related attestation report of the independent certified public accountant.

(14) "SOX Compliant Entity" means an entity that either is required to be compliant with, or voluntarily is compliant with, all of the following provisions of the Sarbanes-Oxley Act of 2002:

(a) The preapproval requirements of Section 201;

(b) The audit committee independence requirements of Section 301; and

(c) The internal control over financial reporting requirements of Section 404.

(15) "Work papers" mean the records kept by the independent certified public accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to the independent certified public accountants audit of the financial statements of an insurer. Work papers may include audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of insurer documents, and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of the independent certified public accountants audit of the financial statements of an insurer and which support the independent certified public accountants opinion of the financial statements of an insurer.

Section 2. Purpose and Scope. (1) This administrative regulation shall be to improve the department's surveillance of the financial condition of insurers by requiring:

(a) An annual audit of financial statements reporting the financial position and the results of operations of insurers by independent certified public accountants[~~accounts~~];

(b) Communication of internal control related matters noted in an audit; and

(c) Management's report of internal control over financial reporting.

(2) Every insurer shall be subject to this administrative regulation. Insurers having direct premiums written in this state of less than one (1) million dollars in any calendar year and less than 1,000 policyholders or certificate holders of direct written policies nationwide at the end of the calendar year shall be exempt from this administrative regulation**.**

(a) Unless the commissioner makes a specific finding that compliance is necessary for the department to carry out its statutory responsibilities, insurers shall be exempt during years in which the following conditions exist. The insurer has, at the end of the calendar year:

1. Direct premiums written in this state of less than $1,000,000; and

2. Less than 1,000 policyholders or certificate holders of direct written policies nationwide.

(b) Insurers that have assumed premiums of $1,000,000 or more pursuant to contracts or treaties of reinsurance shall not be exempt from this administrative regulation.

(3) Foreign or alien insurers filing the audited financial report] in another state, pursuant to the other state's requirement for filing an audited financial report which has been found by the commissioner to be substantially similar to the requirements of this administrative regulation, **shall be[**~~are~~**]** exempt from this administrative regulation if:

(a) The following documents, which are filed with the other state, are filed with the commissioner in accordance with Sections 4, 11, and 12 of this administrative regulation:

1. A copy of the audited financial report;

2. Communication of internal control related matters noted in an audit; and

3. The accountant's letter of qualifications; Canadian insurers may submit accountants' reports as filed with the Office of Superintendent of Financial Institutions, Canada; and

(b) A copy of any notification of adverse financial condition report filed with the other state is filed with the commissioner within the time specified in Section 9 of this administrative regulation.

(4) Foreign or alien insurers required to file management's report of internal control over financial reporting in another state shall be exempt from filing the report in this state if:

(a) The other state has substantially similar reporting requirements; and

(b) The report is filed with the commissioner of the other state within the time specified.

(5) This administrative regulation shall not prohibit, preclude, or in any way limit the commissioner from ordering, conducting, or performing examinations of insurers under KRS 304.2-210 through 304.2-290, 304.17A-820, 304.32-210, 304.35-040, 304.36-140, 304.42-150, 304.48-110, 304.49-080, or 304.50-075.

Section 3. General Requirements Related to Filing and Extensions for Filing of Annual Audited Financial Reports and Audit Committee Appointment. (1) All insurers shall have an annual audit by an independent certified public accountant and shall file an audited financial report with the commissioner on or before June 1 for the year ended December 31 immediately preceding. The commissioner may require an insurer to file an audited financial report earlier than June 1 with ninety (90) days advance notice to the insurer.

(2) Extensions of the June 1 filing date may be granted by the commissioner for thirty (30) day periods upon showing by the insurer and its independent certified public accountant the reasons for requesting the extension and determination by the commissioner of good cause for an extension. The request for extension shall be submitted in writing not less than ten (10) days prior to the due date and contain sufficient detail to permit the commissioner to make an informed decision as to the requested extension.

(3) If an extension is granted in accordance with subsection (2) of this section, a similar extension of thirty (30) days shall be granted to the filing of management's report of internal control over financial reporting.

(4) Every insurer required to file an annual audited financial report pursuant to this administrative regulation shall designate a group of individuals as constituting its audit committee. The audit committee of an entity that controls an insurer may be deemed to be the insurer's audit committee for purposes of this administrative regulation at the election of the controlling person.

Section 4. Contents of Annual Audited Financial Report. (1) The annual audited financial report shall report the financial condition of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows, and changes in capital and surplus for the year then ended in conformity with statutory accounting practices prescribed, or otherwise permitted, by the insurance supervisory authority of the insurer's state of domicile.

(2) The annual audited financial report shall include the following:

(a) Report of independent certified public accountant;

(b) Balance sheet for reporting admitted assets, liabilities, capital, and surplus;

(c) Statement of operations;

(d) Statement of cash flows;

(e) Statement of changes in capital and surplus;

(f) Notes to financial statements as required by KRS 304.3-240 in accordance with KRS 304.3-241. These notes shall also include:

1. A reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed pursuant to KRS 304.3-240 with a written description of the nature of these differences; and

2. A summary of ownership and relationships of the insurer and all affiliated companies; and

(g) The financial statements included in the audited financial report shall be:

1. Prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the commissioner; and

2. Comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding

December 31. However, in the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted. The annual statement forms and instructions are those prescribed by the National Association of Insurance Commissioners as required by KRS 304.3-240.

Section 5. Designation of Independent Certified Public Accountant. (1) Each insurer required by this administrative regulation to file an annual audited financial report shall, within sixty (60) days after becoming subject to this requirement, register with the commissioner in writing the name and address of the independent certified public accountant or accounting firm retained to conduct the annual audit set forth in this administrative regulation. Insurers not retaining an independent certified public accountant on the effective date of this administrative regulation shall register the name and address of their retained certified public accountant not less than six (6) months before the date when the first audited financial report is to be filed.

(2) The insurer shall obtain a letter from the accountant, and file a copy with the commissioner, stating that the accountant is aware of the provisions of the insurance laws of the insurer's state of domicile that relate to accounting and financial matters and affirming that the accountant will express the accountant's opinion on the financial statements in terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by the insurance regulatory authority in that state, specifying any exceptions as the accountant may believe appropriate.

(3) If an accountant who was the accountant for the immediately preceding filed audited financial report is dismissed or resigns the insurer shall:

(a) Within five (5) business days notify the commissioner of this event;

(b) Furnish the commissioner with a separate letter within ten (10) business days of the above notification stating whether in the twenty-four (24) months preceding the accountant's resignation there were any disagreements with the former accountant which, if not resolved to the satisfaction of the former accountant, would cause the accountant to make reference to the subject matter of the disagreement in connection with the opinion. These shall include disagreements:

1. Concerning accounting principles, financial statement disclosure, or auditing scope or procedure**;[**~~.~~**]**

2. That **have[**~~has~~**]** been resolved to the former accountant's satisfaction and those not so resolved**; and[**~~.~~**]**

3. That occur at the decision-making level, that is, between personnel of the insurer responsible for presentation of its financial statements and personnel for the accounting firm responsible for rendering its report**;[**~~.~~**]**

(c) Request the former accountant to furnish a letter addressed to the insurer stating whether the accountant agrees with the statements contained in the insurer's letter, and, if not, stating the reasons for which the accountant does not agree; and

(d) Furnish the responsive letter from the former accountant to the commissioner together with its own.

Section 6. Qualifications of Independent Certified Public Accountant. (1) The commissioner shall not recognize any person or firm as a qualified independent certified public accountant if the person or firm:

(a) Is not in good standing with the American Institute of Certified Public Accountants and in all states in which the accountant is licensed to practice, or, for a Canadian or British insurer, that is not a chartered accountant; or

(b) Has either directly or indirectly entered into an agreement of indemnity or release from liability with respect to the audit of the insurer.

(2) Except as otherwise provided in this administrative regulation, an independent certified public accountant shall be recognized as qualified if the independent certified public accountant conforms to the standards of the accounting profession, as contained in the statutes, administrative regulations, and codes of ethics and rules of professional conduct administered by the State Board of Accountancy of Kentucky in accordance with KRS Chapter 325 and 201 KAR Chapter 1.

(3) The lead or coordinating audit partner having primary responsibility for the audit shall not act in that capacity for more than five (5)[~~seven (7)~~] consecutive years. The person shall be disqualified from acting in that or a similar capacity for the same insurer or its insurance subsidiaries or affiliates for a period of five (5) years.

(a) An insurer may make application to the commissioner for relief from this rotation requirement on the basis of unusual circumstances. Application shall be made at least thirty (30) days before the end of the calendar year. The commissioner may consider the following factors in determining if the relief should be granted:

1. Number of partners, expertise of the partners, or the number of insurance clients in the currently registered firm;

2. Premium volume of the insurer; or

3. Number of jurisdictions in which the insurer transacts business.

(b) The insurer shall file with its annual statement filing the approval for relief from paragraph (a)1 of this subsection with the states that it is licensed in or doing business in and with the National Association of Insurance Commissioners. If the nondomestic state accepts electronic filing with the National Association of Insurance Commissioners, the insurer shall file the approval in an electronic format acceptable to the National Association of Insurance Commissioners via the Web site, https://www2.naic.org/servlet/Index.

(c) The commissioner shall not recognize as a qualified independent certified public accountant, nor accept any annual audited financial report, prepared in whole or in part by any natural person who:

1. Has been convicted of fraud, bribery, or a conviction of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961, 1968;

2. Has been found to have violated the insurance laws of this state with respect to any previous reports submitted under this administrative regulation; or

3. Has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under this administrative regulation.

(4) If an insurer disagrees with a determination made by the commissioner pursuant to subsection (3) of this section, it may request a hearing in accordance with KRS 304.2-310.

(5)(a) The commissioner shall not recognize as a qualified independent certified public accountant, nor accept an annual audited financial report prepared in whole or in part by an accountant who provides to an insurer, contemporaneously with the audit, the following nonaudit services:

1. Bookkeeping or other services related to the accounting records or financial statements of the insurer;

2. Financial information systems design and implementation;

3. Appraisal or valuation services, fairness opinions, or contribution-in-kind reports;

4. Actuarially-oriented advisory services involving the determination of amounts recorded in the financial statements. The accountant may assist an insurer in understanding the methods, assumptions, and inputs used in the determination of amounts recorded in the financial statement only if it is reasonable to conclude that the services provided will not be subject to audit procedures during an audit of the insurer's financial statements. An accountant's actuary may also issue an actuarial opinion or certification on an insurer's reserves if the following conditions have been met:

a. Neither the accountant nor the accountant's actuary has performed any management functions or made any management decisions;

b. The insurer has competent personnel or engages a third party actuary to estimate the reserves for which management takes responsibility; and

c. The accountant's actuary tests the reasonableness of the reserves after the insurer's management has determined the amount of the reserves;

5. Internal audit outsourcing services;

6. Management functions or human resources;

7. Broker or dealer, investment adviser, or investment banking services; or

8. Legal services or expert services unrelated to the audit.

(b) A qualified independent public accountant shall not:

1. Function in the role of management;

2. Audit his or her own work; and

3. Serve in an advocacy role for the insurer.

(6)(a) Insurers having direct written and assumed premium of less than $100,000,000 in any calendar year may request an exemption from subsection (5)(a) of this section.

(b) To request an exemption, the insurer shall file with the commissioner a written statement discussing the reasons why the insurer should be exempt from these provisions.

(c) If the commissioner finds, upon review of this statement, that compliance with this administrative regulation would constitute an organizational hardship upon the insurer, an exemption may be granted.

(7) A qualified independent certified public accountant who performs the audit may engage in other nonaudit services, including tax services, that are not described in subsection (5)(a) of this section or that do not conflict with subsection (5)(b) of this section, only if the activity is approved in advance by the audit committee in accordance with subsection (8) of this section.

(8)(a) All auditing services and nonaudit services provided to an insurer by the qualified independent certified public accountant of the insurer shall be preapproved by the audit committee.

(b) The preapproval requirement shall be waived with respect to nonaudit services if:

1. The insurer is a SOX compliant entity or a direct or indirect wholly-owned subsidiary of a SOX compliant entity; or

2.a. The aggregate amount of all non-audit services provided to the insurer constitutes not more than five (5) percent of the total amount of fees paid by the insurer to its qualified independent certified public accountant during the fiscal year in which the nonaudit services are provided;

b. The services were not recognized by the insurer at the time of[~~shalof~~] the engagement to be nonaudit services; and

c. The services are promptly brought to the attention of the audit committee and approved prior to the completion of the audit by the audit committee or by one or more members of the audit committee who are the members of the board of directors to whom authority to grant approvals has been delegated by the audit committee.

(9) The audit committee may delegate to one (1) or more designated members of the audit committee the authority to grant the preapprovals required by subsection (8) of this section. The decisions of any member to whom this authority is delegated shall be presented to the full audit committee at each of its scheduled meetings.

(10)(a)1. The commissioner shall not recognize an independent certified public accountant as qualified for a particular insurer if the following were employed by the independent certified public accountant and participated in the audit of that insurer during the one (1) year period preceding the date that the most current statutory opinion is due:

a. A member of the board;

b. President;

c. Chief executive officer;

d. Controller;

e. Chief financial officer;

f. Chief accounting officer; or

g. any person serving in an equivalent position for that insurer.

2. This subsection shall only apply to partners and senior managers involved in the audit.

3. An insurer may make application to the commissioner for relief from the above requirements on the basis of unusual circumstances.

(b) The insurer shall file, with its annual statement filing, the approval for relief from subsection (10)(a) of this section with the states that it is licensed in or doing business in and the National Association of Insurance Commissioners. If the nondomestic state accepts electronic filing with the National Association of Insurance Commissioners, the insurer shall file the approval in an electronic format acceptable to the National Association of Insurance Commissioners via the Web site, https://www2.naic.org/servlet/Index.

Section 7. Consolidated or Combined Audits. An insurer may make written application to the commissioner for approval to file audited consolidated or combined financial statements in lieu of separate annual audited financial reports if the insurer is part of a group of insurers which utilizes a pooling or 100 percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer cedes all of its direct and assumed business to the pool. In these cases, a columnar consolidating or combining worksheet shall be filed with the report, as follows:

(1) Amounts shown on the consolidated or combined audited financial report shall be shown on the worksheet;

(2) Amounts for each insurer subject to this section shall be stated separately;

(3) Noninsurance operations may be shown on the worksheet or a combined or individual basis;

(4) Explanations of consolidating and eliminating entries shall be included; and

(5) A reconciliation shall be included of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown in the annual statements of the insurers.

Section 8. Scope of Examination and Report of Independent Certified Public Accountant. (1) Financial statements furnished pursuant to Section 4 of this administrative regulation shall be examined by the independent certified public accountant.

(2) The examination of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards.

(3) In accordance with SAS No. 109, "Understanding the Entity and Its Environment and Assessing the Risks of Material Misstatement" and SAS No. 110, "Performing Audit Procedures in Response to Assessed Risks and Evaluating the Audit Evidence Obtained", or their replacements, the independent certified public accountant shall obtain an understanding of internal control sufficient to plan the audit.

(4) To the extent required by SAS 109 and SAS 110, for those insurers required to file a management's report of internal control over financial reporting pursuant to Section 2 of this administrative regulation, the independent certified public accountant shall consider the most recently available report in planning and performing the audit of the statutory financial statements.

(5) Consideration shall also be given to other procedures illustrated in the Financial Condition Examiner's Handbook of the National Association of Insurance Commissioners which the independent certified public accountant deems necessary.

Section 9. Notification of Adverse Financial Condition. (1)(a) The insurer required to furnish the annual audited financial report shall require the independent certified public accountant to report, in writing, within five (5) business days to the board of directors or its audit committee any determination by the independent certified public accountant that the insurer has materially misstated its financial condition as reported to the commissioner as of the balance sheet date currently under examination or that the insurer does not meet the minimum capital and surplus requirements of KRS 304.3-120 and 304.3-125 as of that date.

(b) An insurer which has received a report pursuant to this subsection shall forward a copy of the report to the commissioner within five (5) business days of receipt of the report and shall provide the independent certified public accountant making the report with evidence of this report being furnished to the commissioner.

(c) If the independent certified public accountant fails to receive this evidence within the required five (5) business day period, the independent certified public accountant shall furnish to the commissioner a copy of its report within the next five (5) business days.

(2) An independent certified public accountant shall not be liable in any manner to any person for any statement made in connection with subsection (1) of this section if the statement is made in good faith in compliance with subsection (1) of this section.

(3) If the accountant, subsequent to the date of the audited financial report filed pursuant to this administrative regulation, becomes aware of facts which might have affected his report, the commissioner notes the obligation of the accountant to take the

action prescribed in volume 1, section AU 561 of the Professional Standards of the American Institute of Certified Public Accountants.

Section 10. Communication of Internal Control Related Matters Noted in an Audit.

(1)(a) In addition to the annual audited financial statements, each insurer shall furnish the commissioner with a written communication as to any unremediated material weakness in its internal control over financial reporting noted during the audit.

(b) The communication shall be prepared by the accountant within sixty (60) days after the filing of the annual audited financial report, and shall contain a description of any unremediated material weaknesses as of December 31 immediately preceding in the insurer's internal control over financial reporting noted by the accountant during the course of their audit of the financial statements.

(c) If no unremediated material weaknesses were noted, the communication shall state that none were found.

(2) An insurer shall provide a description of remedial actions taken or proposed to correct unremediated material weaknesses, if the action is not described in the accountant's communication.

Section 11. Accountant's Letter of Qualifications. The accountant shall furnish the insurer in connection with, and for inclusion in, the filing of the annual audited financial report, a letter stating:

(1) That the accountant is independent with respect to the insurer and conforms to the standards of the accountant's profession as contained in statutes, administrative regulations, and rules of professional conduct of the State Board of Accountancy of Kentucky set forth in KRS Chapter 325 and 201 KAR Chapter 1;

(2) The background and experience in general, and the experience in audits of insurers of the staff assigned to the engagement and whether each is an independent certified public accountant. **This administrative regulation shall not prohibit** **[**~~Nothing in this administrative regulation prohibits~~**]** the accountant from utilizing staff as the accountant deems appropriate **if[**~~where~~**]** use is consistent with the standards prescribed by generally accepted auditing standards;

(3) That the accountant understands the annual audited financial report, that the accountant's opinion on it will be filed in compliance with this administrative regulation, and that the commissioner will be relying on this information in monitoring **[**~~and administrative regulation of~~**]** the financial position of insurers;

(4) That the accountant consents to the requirements of Section 12 of this administrative regulation and that the accountant consents and agrees to make available for review by the commissioner, his designee, or his appointed agent, the work papers;

(5) A representation that the accountant is properly licensed by an appropriate state licensing authority and is a member in good standing of the American Institute of Certified Public Accountants; **and**

(6) A representation that the accountant is in compliance with the requirements of Section 6 of this administrative regulation.

Section 12. Availability and Maintenance of Independent Certified Public Accountant Work Papers. (1) Every insurer required to file an audited financial report pursuant to this administrative regulation shall require the accountant to make available for review by department examiners all work papers prepared in the conduct of the accountant's audit and any communications related to the audit between the accountant and the insurer, at the offices of the insurer, at the department, or any other reasonable place designated by the commissioner. The insurer shall require that the accountant retain the audit work papers and communications until the department has filed a report on examination covering the period of the audit, but no longer than seven (7) years from the date of the audit report.

(2) In the conduct of the periodic review by department examiners described in subsection (1) of this section, it shall be agreed that photocopies of pertinent audit work papers may be made and retained by the department. Reviews by the department examiners shall be considered investigations and all working papers and communications obtained during the course of shall be afforded the same confidentiality as other examination work papers generated by the department.

Section 13. Requirements for Audit Committees. This section shall not apply to foreign or alien insurers licensed in this state or an insurer that is a SOX compliant entity or a direct or indirect wholly-owned subsidiary of a SOX compliant entity.

(1) The audit committee shall be directly responsible for the appointment, compensation**,** and oversight of the work of any accountant, including resolution of disagreements between management and the accountant regarding financial reporting, for the purpose of preparing or issuing the audited financial report or related work pursuant to this administrative regulation. Each accountant shall report directly to the audit committee.

(2) Each member of the audit committee shall be a member of the board of directors of the insurer or a member of the board of directors of an entity elected pursuant to subsection (5) of this section and section 3(4) of this administrative regulation.

(3)(a) A member of the audit committee shall not, other than in his or her capacity as a member of the audit committee, the board of directors**,** or any other board committee**:**

1. Accept[~~, accept~~**]** any consulting advisory or other compensatory fee from the entity**;** or

2. Be an affiliated person of the entity or any subsidiary.

(b) Notwithstanding paragraph (a) of this subsection, if the law requires board participation by otherwise nonindependent members, that law shall prevail and the members may participate in the audit committee and be designated as independent for audit committee purposes, unless they are an officer or employee of the insurer or one of its affiliates.

(4) If a member of the audit committee ceases to be independent for reasons outside the member's reasonable control, that person, with notice by the responsible entity to the state, may remain an audit committee member of the responsible entity until the earlier of:

(a) The next annual meeting of the responsible entity; or

(b) One year from the occurrence of the event that caused the member to be no longer independent.

(5)(a) To exercise the election of the controlling person to designate the audit committee for purposes of this administrative regulation, the ultimate controlling person shall provide written notice to the commissioners of the affected insurers.

(b) Notification shall be made timely prior to the issuance of the statutory audit report and shall include a description of the basis for the election.

(c) The election can be changed through notice to the commissioner by the insurer which shall include a description of the basis for the change.

(d) The election shall remain in effect for perpetuity, until rescinded.

(6)(a) The audit committee shall require the accountant that performs for an insurer any audit required by this administrative regulation to timely report to the audit committee in accordance with the requirements of SAS 114, "The Auditor's Communication With Those Charged With Governance", or its replacement, including:

1. All significant accounting policies and material permitted practices;

2. All material alternative treatments of financial information within statutory accounting principles that have been discussed with management officials of the insurer, ramifications of the use of the alternative disclosures and treatments, and the treatment preferred by the accountant; and

3. Other material written communications between the accountant and the management of the insurer, including any management letter or schedule of unadjusted differences.

(b) If an insurer is a member of an insurance holding company system, the reports required by paragraph (a) of this subsection may be provided to the audit committee on an aggregate basis for insurers in the holding company system, provided that any substantial differences among insurers in the system are identified to the audit committee.

(7)(a) The proportion of independent audit committee members shall meet or exceed the following criteria:

1. For prior calendar year direct written and assumed premiums between $0 and $300,000,000, no minimum requirements;

2. For prior calendar year direct written and assumed premiums over $300,000,000 to $500,000,000, fifty (50) percent or more of members shall be independent; and

3. For prior calendar year direct written and assumed premiums over $500,000,000; seventy-five (75) percent of members shall be independent.

(b) Notwithstanding subsection (7)(a) of this section, the commissioner may require the audit committee's board to enact improvements to the independence of the audit committee membership if the insurer:

1. Is in a risk-based capital action level in accordance with 806 KAR 3:190; or

2. Meets one or more of the standards of an insurer deemed to be in hazardous financial condition or otherwise exhibits qualities of a troubled insurer as set forth in KRS 304.2-065.

(c) An insurer with less than $500,000,000 in prior year direct written and assumed premiums may structure its audit committee with at least a supermajority of independent audit committee members.

(d) For purposes of subsection (7)(a) of this section, prior calendar year direct written and assumed premiums shall be the combined total of direct premiums and assumed premiums from nonaffiliates for the reporting entities.

(8)(a) An insurer with direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than $500,000,000 may make application to the commissioner for a waiver from the requirements of this section based upon hardship.

(b) The insurer shall file, with its annual statement filing, the approval for relief from this section with the states that it is licensed in or doing business in and the National Association of Insurance Commissioners.

(c) If the nondomestic state accepts electronic filing with the National Association of Insurance Commissioners, the insurer shall file the approval in an electronic format acceptable to the National Association of Insurance Commissioners, via the Web site, https://www2.naic.org/servlet/Index.

Section 14. Conduct of Insurer in Connection with the Preparation of Required Reports and Documents. (1) A director or officer of an insurer shall not, directly or indirectly:

(a) Make or cause to be made a materially false or misleading statement to an accountant in connection with any audit, review, or communication required under this administrative regulation; or

(b) Omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which the statements were made, not misleading to an accountant in connection with any audit, review, or communication required under this administrative regulation.

(2) An officer or director of an insurer, or any other person acting under the direction of the officer or director, shall not, directly or indirectly, take any action to coerce, manipulate, mislead, or fraudulently influence any accountant engaged in the performance of an audit pursuant to this administrative regulation if that person knew or should have known that the action, if successful, could result in rendering the insurer's financial statements materially misleading.

(3) An officer or director of an insurer, or any other person acting under the direction of the officer or director, shall not, directly or indirectly, take any of the following actions to coerce, manipulate, mislead, or fraudulently influence an accountant with respect to the professional engagement period:

(a) To issue or reissue a report on an insurer's financial statements that is not warranted in the circumstances due to material violations of statutory accounting principles as required by KRS 304.3-241, generally accepted auditing standards, or other professional or regulatory standards;

(b) Not to perform audit, review, or other procedures required by generally accepted auditing standards or other professional standards;

(c) Not to withdraw an issued report; or

(d) Not to communicate matters to an insurer's audit committee.

Section 15. Management's Report of Internal Control over Financial Reporting. (1)(a) Every insurer required to file an audited financial report pursuant to this administrative regulation that has annual direct written and assumed premiums, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of $500,000,000 or more shall prepare a report of the insurer's or group of insurers' internal control over financial reporting.

(b) The report shall be filed with the commissioner along with the communication of internal control related matters noted in an audit.

(c) Management's report of internal control over financial reporting shall be as of December 31 immediately preceding.

(2) Notwithstanding the premium threshold in subsection (1)(a) of this section, the commissioner may require an insurer to file management's report of internal control over financial reporting if the insurer:

(a) Is in any risk-based capital level event in accordance with 806 KAR 3:190; or

(b) Meets one or more of the standards of an insurer deemed to be in hazardous financial condition in accordance with KRS 304.2-065.

(3) An insurer or a group of insurers meeting the following requirements may file its or its parent's Section 404 Report and an addendum in satisfaction of the requirements of this section if those internal controls of the insurer or group of insurers having a material impact on the preparation of the insurer's or group of insurer's audited statutory financial statements were included in the scope of the Section 404 Report:

(a) Directly subject to Section 404;

(b) Part of a holding company system whose parent is directly subject to Section 404;

(c) Not directly subject to Section 404, but is a SOX compliant entity; and

(d) A member of a holding company system whose parent is not directly subject to Section 404 but is a SOX compliant entity.

(4) Management's report of internal control over financial reporting shall include:

(a) A statement that management is responsible for establishing and maintaining adequate internal control over financial reporting;

(b) A statement that management has established internal control over financial reporting and an assertion, to the best of management's knowledge and belief, after diligent inquiry, as to whether its internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles;

(c) A statement that briefly describes the approach or processes by which management evaluated the effectiveness of internal control over financial reporting;

(d) A statement that briefly describes the scope of work that is included and whether any internal controls were excluded;

(e) Disclosure of any unremediated material weaknesses in the internal control over financial reporting identified by management as of December 31 immediately preceding. Management shall not conclude that the internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles if there is one or more unremediated material weaknesses in its internal control over financial reporting;

(f) A statement regarding the inherent limitations of internal control systems; and

(g) Signatures of the chief executive officer and the chief financial officer.

(5) Management shall document and make available upon financial condition examination the basis upon which its assertions, required in subsection (4) of this section, are made. Management may base its assertions, in part, upon its review, monitoring, and testing of internal controls undertaken in the normal course of its activities.

(a) Management shall have discretion as to the nature of the internal control framework used, and the nature and extent of the documentation, in order to make its assertion in a cost effective manner and may include assembly of or reference to existing documentation.

(b) **The following shall have one (1) year following the year the threshold is exceeded to comply with the independence requirements in Section 6 of this administrative regulation, but not earlier than January 1, 2010. An insurer or group of insurers that, pursuant to Section 13 of this administrative regulation:**

1. Is not required to have independent audit committee members or is required to have only a majority of independent audit committee members because the total written and assumed premiums is below the threshold; and

2. Subsequently becomes subject to one (1) of the independence requirements due to changes in premium. [~~Management's report on internal control over financial reporting, as required by this section, and any documentation provided in support of the report during the course of a financial examination, shall be kept confidential by the department.~~**]**

Section 16. Exemptions and Effective Dates. (1) Upon written application of any insurer, the commissioner may grant an exemption from compliance with any and all provision of this administrative regulation if the commissioner finds, upon review of the application, that compliance with this administrative regulation would constitute a financial or organizational hardship upon the insurer. An exemption may be granted any time and from time to time for a specified period or periods. Upon denial of an insurer's written request for an exemption from this administrative regulation, the insurer may request a hearing on its application for an exemption pursuant to KRS 304.2-310.

(2) Domestic insurers retaining a certified public accountant on the effective date of this administrative regulation who qualify as independent shall comply with this administrative regulation for the year ending December 31, 2010, and each year thereafter unless the commissioner permits otherwise.

(3) Domestic insurers not retaining a certified public accountant on the effective date of this administrative regulation who qualify as independent shall meet the following schedule for compliance unless the commissioner permits otherwise:

(a) As of December 31, 2010, file with the commissioner an audited financial report.

(b) For the year ending December 31, 2010, and each year thereafter, these insurers shall file with the commissioner all reports and communication required by this administrative regulation.

(4) Foreign insurers shall comply with this administrative regulation for the year beginning January 1, 2010, and each year thereafter.

(5)(a) The requirements of Section 13 of this administrative regulation shall be effective January 1, 2010.

(b) An insurer or group of insurers that, pursuant to Section 13 of this administrative regulation, is not required to have independent audit committee members or only a majority of independent audit committee members because the total written and assumed premiums is below the threshold and subsequently becomes subject to one (1) of the independence requirements due to changes in premium shall have one (1) year following the year the threshold is exceeded, but not earlier than January 1, 2010, to comply with the independence requirements in Section 6 of this administrative regulation.

(c) An insurer that becomes subject to one of the independence requirements as a result of a business combination shall have one (1) calendar year following the date of acquisition or combination to comply with the independence requirements in Section 13 of this administrative regulation.

(6)(a) The requirements of Section 15 of this administrative regulation shall be effective beginning with the reporting period ending December 31, 2010 and each year thereafter.

(b) An insurer or group of insurers that is not required to file an annual audit report because the total written premium is below the threshold and subsequently becomes subject to the reporting requirements shall have two (2) years following the year the threshold is exceeded, but not earlier than December 31, 2010, to file an annual audit report.

(c) An insurer acquired in a business combination shall have two (2) calendar years following the date of acquisition or combination to comply with the reporting requirements in Section 4 of this administrative regulation.

Section 17. Canadian and British Companies. (1) In the case of Canadian and British insurers, the annual audited financial reports shall be defined as the annual statement of total business in the manner filed by these insurers with their supervisory authority duly audited by an independent chartered accountant.

(2) For Canadian and British insurers, the letter required by Section 5 of this administrative regulation shall state that the accountant is aware of the requirements relating to the annual audited financial report filed with the commissioner pursuant to Section 3 of this administrative regulation and shall affirm that the opinion expressed is in conformity with the requirements of Section 3 of this administrative regulation.

Section 18. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Financial Condition Examiner's Handbook", 2008, National Association of Insurance Commissioners;

(b) AU Section 561, "Subsequent Discovery of Facts Existing at the Date of the Auditor's Report", 1996 Professional Standards of the American Institute of Certified Public Accountants;

(c) SAS 114, "The Auditors Communication With Those Charged with Governance", 2007, American Institute of Certified Public Accountants;

(d) SAS 109, "Understanding the Entity and Its Environment and Assessing the Risks of material Misstatement", 2007 American Institute of Certified Public Accountants; and

(e) SAS 110, "Performing Audit Procedures in Response to Assessed Risks and Evaluating the Audit Evidence", 2007 American Institute of Certified Public Accountants.

(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's Web site at **http://insurance.ky.gov** **[**~~http://doi.ppr.ky.gov/kentucky~~**]**.

SHARON P. CLARK, Commissioner
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: April 11, 2011

FILED WITH LRC: April 14, 2011 at 4 p.m.

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 requires annual filing of audited financial reports by insurers.

(b) The necessity of this administrative regulation: This administrative regulation will allow the Department of Insurance improved oversight of the financial condition of insurers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the commissioner may adopt reasonable administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.3-240 authorizes the executive director to require additional information to the annual statement filed by insurers. This administrative regulation requires the annual filing of audited financial reports by insurers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will improve the Department of Insurance's oversight of the financial condition of insurers by requiring an annual audit of financial statements reporting the financial position and the

results of operations of insurers by independent certified public accountants.

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

(a) How the amendment will change this existing administrative regulation: This amendment will change the requirement for an insurer to rotate accountants from every seven (7) years to every five (5) years. Further, the amendment will expressly state that risk retention groups and captive insurers are subject to the requirements of this administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to conform to statutory changes to KRS 304.3-180 and to address concerns raised by the National Association of Insurance Commissioners (NAIC) during the interim annual review for Kentucky's financial accreditation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the commissioner may adopt reasonable administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.3-240 authorizes the commissioner to require additional information to the annual statement filed by insurers. KRS 304.49-140 allows the commission to establish and amend administrative regulations relating to captive insurance companies necessary to enable the commissioner to carry out the provisions of KRS 304.49-010 to 304.49-230. This amendment requires the rotation of accountants every five (5) years rather than every seven (7) years, as set forth in KRS 304.3-180. It also clarifies that risk retention groups are subject to the provisions of the regulation.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will improve the Department's financial oversight of insurers in that the provisions are intended to strengthen independent review of the financial statements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts approximately 2,200 licensed insurers, 4 risk retention groups and 7 workers' compensation self-insured groups.

(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 change regarding rotation of accountants is a conforming change to a statutory requirement. Regulated entities are already complying with this requirement. The remaining changes are already being complied with on a voluntary basis. Therefore, the regulated entities will not have to change any business practices to be in compliance 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): As the regulated entities are already complying with the requirements of this amendment, there should not be any cost to comply.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance with this administrative regulation, regulated entities will be operating in a manner that will strengthen the accountability of their independent auditors and will provide more financial security to the policyholders of Kentucky.

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

(a) Initially: There should be no initial cost to implement this administrative regulation.

(b) On a continuing basis: There should be no cost on a continuing basis.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The budget of the Kentucky Department of Insurance will be used to implement and enforce this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendments to this administrative regulation do not establish any new fees or increase any existing fees.

(9) TIERING: Is tiering applied? All insurers are subject to this administrative regulation. However, insurers having direct premiums written in this state of less than one million dollars in any calendar year and less than 1,000 policyholders or certificate holders of direct written policies nationwide at the end of the calendar year may be exempt from the requirements for years in which those conditions exist.

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, 304.3-240, 304.49-140

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 be 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 will be 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 will be revenue neutral.

(c) How much will it cost to administer this program for the first year? This regulation will be revenue neutral.

(d) How much will it cost to administer this program for subsequent years? This regulation will be 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: The amendment to this existing administrative regulation offers technical clarifications and will not have a revenue impact.

PUBLIC PROTECTION CABINET
Department of Insurance
Health and Life Division
(Amended After Comments)

806 KAR 12:120. Suitability in annuity transactions.

RELATES TO: KRS 304.9-390, 304.12-010, 304.99-020, 26 U.S.C. 401, 403, 408, 414, 457, 29 U.S.C. 1001-1461

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner[~~Executive Director of the Office~~] of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304. This administrative regulation establishes standards and procedures for recommendations to consumers that result in a transaction involving annuity products so that the insurance needs and financial objectives of consumers during the transaction are appropriately addressed.

Section 1. Definitions. (1) "Agent" is defined in KRS 304.9-

020(1).

(2) "Annuity" is defined in KRS 304.5-030.

(3) "Commissioner**"** is defined by KRS 304.1-050(1).

(4) "Consultant" is defined in KRS 304.9-040.

(5) "FINRA" means the Financial Industry Regulatory Authority or a succeeding agency.

(6)[~~(4) "Executive director" is defined in KRS 304.1-050(1).~~

~~(5)~~] "Insurance producer" is defined in KRS 304.9-020(7).

(7)[~~(6)~~] "Insurer" is defined in KRS 304.9-020(10)[~~304.1-040~~].

(8)[~~(7)~~] "Licensee" means agent, **or an** insurer if an agent is not involved, and consultant.

(9)[~~(8)~~] "Recommendation" means advice provided by a licensee to an individual consumer that results in a purchase,[~~or~~] exchange, or replacement of an annuity in accordance with that advice.

(10) "Replacement" is defined in KRS 304.12-030(1)(a).

(11) "Suitability information" means information that is reasonably appropriate to determine the suitability of a recommendation in accordance Section 3(2).

Section 2. Exemptions. This administrative regulation shall not apply to recommendations involving:

(1) Direct response solicitations without a recommendation based on information collected from the consumer pursuant to this administrative regulation; or

(2) Contracts used to fund:

(a) An employee pension or welfare benefit plan covered by the Employee Retirement and Income Security Act (ERISA), codified as 29 U.S.C. 1001 to 1461;

(b) A plan described by 26 U.S.C. 401(a), (k), 403(b), 408(k),or (p), as amended, if established or maintained by an employer;

(c) A government or church plan defined in 26 U.S.C. 414, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under 26 U.S.C. 457;

(d) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(e) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

(f) Prepaid funeral contracts.

Section 3. Duties of Licensees. (1) In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the licensee shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to these investments and other insurance products and as to the consumer's financial situation and needs, including the consumer's suitability information, and that there shall be a reasonable basis to believe all of the following:

(a)The consumer has been informed of various features of the annuity, including:

1. The potential surrender period and surrender charge;

2. Potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity;

3. Mortality and expense fees;

4. Investment advisory fees;

5. Potential charges for and features of riders;

6. Limitations on interest returns, insurance, and investment components; and

7. Market risk;

(b) The consumer would benefit from certain features of the annuity, including:

1. Tax deferred growth;

2. Annuitization; or

3.Death or living benefit;

(c) For the particular consumer, based on his or her suitability information, the transaction as a whole is suitable, including:

1. The type of annuity**;[**~~:~~**]**

2. The underlying subaccounts to which the funds are allocated **[**~~are~~**]** at purchase or exchange of the annuity;

3. The riders; and

4. The similar product enhancements; and

(d) **If there is[**~~In the case of~~**]** an exchange or replacement of an annuity, the exchange or replacement is suitable including taking into consideration whether:

1. The consumer shall:

a. Incur a surrender charge;

b. Be subject to the commencement of a new surrender period;

c. Lose existing benefits including death, living**,** or other contractual benefits; or

d. Be subject to increased fees, including:

i. Investment advisory fees; or

ii.. Charges for riders and similar product enhancements;

2. The consumer would benefit from product enhancements and improvements; and

3. The consumer has had another annuity exchange or replacement and in particular, exchange or replacement within the preceding thirty-six (36) months.

(2) Prior to the execution of a purchase**,** [~~or~~] exchange, or replacement of an annuity resulting from a recommendation, the licensee shall make reasonable efforts to obtain the consumer's suitability information including the following:

(a) Age;

(b) Annual income;

(c) Financial situation and needs, including the financial resources used for the funding of the annuity;

(d) Financial experience;

(e) Financial objectives;

(f) Intended use of the annuity;

(g) Financial time horizon;

(h) Existing assets, including investment and life insurance holdings;

(i) Liquidity needs;

(j) Liquid net worth;

(k) Risk tolerance; and

(l) Tax status.[~~information concerning:~~

~~(a) The consumer's financial status;~~

~~(b) The consumer's tax status;~~

~~(c) The consumer's investment objectives; and~~

~~(d) Other information necessary for making recommendations to the consumer.~~]

(3) Except as permitted under subsection (4), an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.

(4)(a)[~~(3)(a)~~] Except as provided under paragraph (b) of this subsection, the licensee shall not have an obligation to a consumer under this subsection or subsection (1) of this section related to an annuity transaction[~~a recommendation~~] if:.[~~a consumer:~~]

1. A consumer refuses to provide relevant suitability information requested by the licensee and the annuity transaction is not recommended;

2. A consumer decides to enter into an insurance transaction not based on a recommendation of the licensee; [~~or~~]

3. A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer; or

4. No recommendation is made.[~~Fails to provide complete or accurate information~~].

(b) A licensee's recommendation subject to paragraph (a) of this subsection shall be reasonable under all the circumstances actually known to the licensee at the time the annuity is issued[~~of the recommendation~~].

(5) A licensee shall at the time of sale:

(a) Make a record of any recommendation subject to section 3(1) of this administrative regulation;

(b) Obtain a consumer signed statement documenting a consumer's refusal to provide suitability information, if any; and

(c) Obtain a consumer signed statement acknowledging that an annuity transaction is not recommended if a consumer decides to enter into an annuity transaction that is not based on the licensee's recommendation.

(6)(a)[~~(4)(a)~~] An insurer shall [~~either: 1. Assure that a~~]establish a system [~~to supervise recommendations~~] that is reasonably designed to achieve a licensee's compliance with this administrative

regulation, including the following:

1. The insurer shall maintain reasonable procedures to inform its licensees of the requirements of this administrative regulation and shall incorporate the requirements of this administrative regulation into relevant insurance licensee training manuals.

2. The insurer shall establish standards for licensee product training and shall maintain reasonable procedures to require its licensees to comply with the requirements of Section 4 of this administrative regulation.

3. The insurer shall provide product-specific training and training materials which explain all material features of its annuity products to its licensees.

4. The insurer shall maintain procedures for review of each recommendation prior to issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable.

a. These review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including physical review.

b. This electronic or other system for review procedures may be designed to require additional review only of those transactions identified for additional review by the selection criteria**.[;]**

5. The insurer shall maintain reasonable procedures to detect recommendations that are not suitable. This may include confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters and programs of internal monitoring. An insurer may comply with this subparagraph by applying sampling procedures, or by confirming suitability information after issuance or delivery of the annuity**.[~~; and~~]**

6. The insurer shall annually provide a report to senior management, including to the senior manager responsible for audit functions, which details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.

(b)1. An insurer may contract for performance of a function, including maintenance of procedures, required under paragraph (a) of this subsection.

2. An insurer's supervision system under paragraph 1. shall include supervision of contractual performance under this subsection. This shall include the following:

a.[~~i.~~] Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed;

b.[~~ii.~~] Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager represents, that the function is properly performed; and

3. If an insurer contracts for performance of a function and supervises the performance of the contract in accordance with subsection (6)(b)2 of this section, the insurer shall remain responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to Section 5 of this administrative regulation.

(c) An insurer shall not be required to include in its system of supervision a licensee's recommendations to consumers of products other than the annuities offered by the insurer.

(7) A licensee shall not attempt to influence a consumer from:

(a) Truthfully responding to an insurer's request for confirmation of suitability information;

(b) Filing a complaint; or

(c) Cooperating with the investigation of a complaint.

(8)(a)1. Sales made in compliance with FINRA requirements pertaining to suitability and supervision of annuity transactions shall satisfy the requirements under this administrative regulation.

2. This subsection shall apply to FINRA broker-dealer sales of variable annuities and fixed annuities if the suitability and supervision is similar to those applied to variable annuity sales.

3. This subsection shall not limit the commissioner's ability to enforce the provisions of this administrative regulation.

(b) For paragraph (a) to apply, an insurer shall:

1. Monitor the FINRA member broker-dealer using information collected in the normal course of an insurer's business; and

2. Provide to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the FINRA member broker-dealer to maintain its supervision system.

(9) The requirements of this section are intended to supplement and not replace the disclosure requirements in 806 KAR 12:150.[~~and shall comply with paragraphs (c) through (e) of this subsection; or~~

~~2. a. Establish and maintain written procedures to demonstrate the insurer's compliance with this administrative regulation; and~~

~~b. Conduct periodic reviews of its records that shall be reasonably designed to assist in detecting and preventing violations of this administrative regulation.~~

~~(b) A supervising insurance producer shall adopt a system established by an insurer to supervise recommendations of its agents that is reasonably designed to achieve compliance with this administrative regulation, or shall establish and maintain a system, including:~~

~~1. Maintaining written procedures to demonstrate the insurer's compliance with this administrative regulation; and~~

~~2. Conducting periodic reviews of records that shall be reasonably designed to assist in detecting and preventing violations of this administrative regulation.~~

~~(c) An insurer may contract with a third party, including an insurance producer, to establish and maintain a system of supervision as required by paragraph (a) of this subsection with respect to insurance agents under contract with or employed by the third party.~~

~~(d)1. An insurer shall make reasonable inquiry to assure that the third party contracting under paragraph (c) of this subsection is performing the functions required under paragraph (a) of this subsection and shall take reasonable action to enforce the contractual obligation to perform the functions.~~

~~2. An insurer shall comply with its obligation to make reasonable inquiry if the insurer:~~

~~a. Annually obtains a certification from a senior manager of the third party who has responsibility for the delegated functions that the manager has a reasonable basis to represent, and does represent, that the third party is performing the required functions; and~~

~~b. Based on reasonable selection criteria, periodically selects third parties contracting under paragraph (c) of this subsection for a review to determine if the third parties are performing the required functions. The insurer shall perform those procedures to conduct the review that are reasonable under the circumstances.~~

~~(e) An insurer that contracts with a third party pursuant to paragraph (c) of this subsection and that complies with the requirements to supervise in paragraph (d) of this subsection shall be in compliance with paragraph (a) of this subsection.~~

~~(f) An insurer or supervising insurance producer shall not be required by paragraph (a) or (b) of this subsection to:~~

~~1. Review, or provide for review of, all agent solicited transactions; or~~

~~2. Include in its system of supervision an agent's recommendations to consumers of products other than the annuities offered by the insurer or supervising insurance producer.~~

~~(g) A supervising insurance producer contracting with an insurer pursuant to paragraph (c) of this subsection shall promptly, if requested by the insurer pursuant to paragraph (d) of this subsection, give a certification as described in paragraph (d)1a of this subsection or give a clear statement that the supervising insurance producer is unable to meet the certification criteria.~~

~~(h) A person shall not provide a certification under paragraph (d)1.a. of this subsection unless:~~

~~1. The person is a senior manager with responsibility for the delegated functions; and~~

~~2. The person has a reasonable basis for making the certification.~~

Section 4. Licensee Training. (1) An agent shall not sell, solicit, or negotiate an annuity product unless the agent has completed training in accordance with 806 KAR 9:220, Section 5**.[~~; and~~]**

(2) A consultant shall not advise an individual regarding an annuity unless the consultant has completed the training in accordance with 806 KAR 9:220, Section 5.

(3) A licensee shall maintain records documenting compliance with the training requirements in subsection (1) and (2) of this sec-

tion, which shall be available:

(a) To the department, if requested; and

(b) For a period not less than five (5) years.

(4) An insurer shall verify that an agent has completed the annuity training course required under this subsection before allowing the agent to sell an annuity product for that insurer.

Section 5. Mitigation of Responsibility. (1) An insurer shall be responsible for compliance with this administrative regulation. If a violation occurs, due to the action or inaction of the insurer or its licensee, the commissioner may[~~executive director shall~~] require:

(a) An insurer to take appropriate corrective action for any consumer harmed by the insurer's, or by its agent's, violation of this administrative regulation;

(b) An agent to take appropriate corrective action for any consumer harmed by the insurance agent's violation of this administrative regulation; or

(c) A supervising insurance producer that employs or contracts with an insurance agent to sell, or solicit the sale, of annuities to consumers, to take appropriate corrective action for any consumer harmed by the agent's violation of this administrative regulation;

(2) The commissioner may require [~~or~~

~~(d)~~] consultant to take appropriate corrective action for any consumer harmed by the consultant's violation of this administrative regulation.

(3)[~~(2)~~] Any applicable penalty under KRS 304.99-020 for a violation of Section 3(1), (2), or (3) of this administrative regulation may be reduced or eliminated, if corrective action for the consumer is taken promptly after a violation is discovered.

Section 6. Recordkeeping. Licensees shall maintain records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions in accordance with KRS 304.9-390 and 806 KAR 2:070. An insurer may maintain documentation on behalf of a licensee.

Section 7. Effective Date. The requirements**[**~~, implementation, and enforcement~~**]** of this administrative regulation shall **not be implemented or enforced prior to the effective date, determined pursuant to KRS 13A.330, or January 1, 2012, whichever is later. [**~~begin on July 1, 2011~~][~~January 1, 2008~~]**[**~~.~~**]**

SHARON P. CLARK, Commissioner
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: April 11, 2011

FILED WITH LRC: April 14, 2011 at 4 p.m.

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 standards and procedures for recommendations to consumers that result in a transaction involving annuity products so that the insurance needs and financial objectives of consumers during the transaction are appropriately addressed.

(b) The necessity of this administrative regulation: This administrative regulation will provide guidance to insurers and agents selling an annuity product as to the suitability of the product.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the commissioner to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304. This regulation will aid insurers and agents by providing guidance and requirements for purchase of annuities as to the suitability.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation currently provides guidance, procedures and information for insurers and agents with regard to the purchase of annuities as to the suitability of the product.

(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 make technical corrections and will amend to add more comprehensive standards for suitability determinations. The amendments after comments allow for a January 1, 2012, effective date to provide time for insurer implementation of the new requirements and procedures and to allow for licensee training.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to incorporate appropriate changes due to a revised NAIC model law with more comprehensive standards for determining suitability in the sale of annuities.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the commissioner to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304. This amendment will make technical changes to the regulation due to 2010 Ky. Acts ch. 24 which relates to the reorganization of the Department of insurance.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will be a guide for DOI's consumer protection division to use when investigation a complaint relating to the sale of an annuity product and its suitability for the consumer.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendment to this administrative regulation will affect approximately 470 insurers and 66,000 agents offering annuity products.

(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: These entities will be required comply with the amended regulation by revising their suitability questionnaires to ensure that all required information is obtained prior to recommending an annuity product.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Since these insurers and agents are already complying with the previous version of this regulation, the costs associated with providing the amended version should be minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The insurers and agents will be in compliance with state law and will have resources to aid consumers in purchasing an annuity.

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

(a) Initially: Minimal, if any.

(b) On a continuing basis: Minimal, if any.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The budget of the Department of Insurance.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No new fees, or direct or indirect increases in fees, will be established or incurred.

(9) TIERING: Is tiering applied? Tiering is not applied; the provisions of this administrative regulation will be implemented in the same manner for all insurers and agents who have annuity products.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program,

service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Kentucky Revised Statute 304.2-110(1) 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.

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 amended regulation should 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? The amended regulation will not generate additional revenue.

(c) How much will it cost to administer this program for the first year? The cost of administering this program will not change.

(d) How much will it cost to administer this program for subsequent years? The cost of administering this program will not change.

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

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(Amendment)

11 KAR 3:100. Administrative wage garnishment.

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

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

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

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

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

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

(a) The name and address of the debtor;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) The hearing shall be held during regular business hours: Monday through Friday between the hours of 9 a.m. and 4 p.m. Eastern Standard Time.

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

1. A party shall request the disqualification of a hearing officer by filing an affidavit, upon discovery of facts establishing grounds for a disqualification, stating the particular grounds upon which he claims that a fair and impartial hearing cannot be accorded.

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

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

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

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

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

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

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

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

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

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

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

costs. The official record of the hearing shall consist of:

1. All notices, pleadings, motions, and intermediate rulings;

2. Any prehearing order;

3. Evidence received and considered;

4. A statement of matters officially noticed;

5. Proffers of proof and objections and rulings thereon;

6. Ex parte communications placed upon the record by the hearing officer;

7. A recording or transcript of the proceedings; and

8. The hearing officer's decision or an order of the hearing officer issued pursuant to Section 3(2)(e) of this administrative regulation.

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

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

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

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

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

1. A concise statement of the reason that the petitioner asserts as the basis pursuant to paragraph (g) of this subsection for reversing, modifying or remanding the hearing officer's decision or an order of the hearing officer issued pursuant to Section 3(2)(e) of this administrative regulation;

2. A statement specifying the part of the official record that the petitioner relies upon to support reversing, modifying or remanding the hearing officer's decision pursuant to paragraph (g) of this subsection; and

3. A statement of whether the petitioner believes that oral argument to the board is necessary.

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

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

1. Not substitute its judgment for that of the hearing officer as to the weight of the evidence on questions of fact; and

2.a. Uphold the hearing officer's decision unless it is clearly unsupported by the evidence and the applicable law;

b. Reject or modify, in whole or in part, the hearing officer's decision; or

c. Remand the matter, including an order of the hearing officer issued pursuant to Section 3(2)(e) of this administrative regulation, in whole or in part, to the hearing officer for further proceedings as appropriate if it finds the hearing officer's final order is:

(i) In violation of constitutional or statutory provisions;

(ii) In excess of the statutory authority of the agency;

(iii) Without support of substantial evidence on the whole record;

(iv) Arbitrary, capricious, or characterized by abuse of discretion; or

(v) Based on an ex parte communication which substantially prejudiced the rights of a party and likely affected the outcome of the hearing.

(h) The final order of the board shall be in writing. If the final order differs from the hearing officer's decision, it shall include separate statements of findings of fact and conclusions of law.

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

(a) Preclude the use of other judicial or administrative remedies available to the authority under state or federal law; and

(b) Be construed to stay the use of another remedy.

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

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

(b)1. Not more than ten (10) business days after the date of filing the request for a hearing or a review of written material, the debtor shall submit to the counsel for the authority a written statement specifically stating the basis of dispute.

2. Not less than fifteen (15) business days prior to the hearing, the parties shall:

a. Confer and jointly stipulate the issues that are in controversy to be resolved by the hearing officer;

b. Discuss the possibility of informal resolution of the dispute;

c. Exchange a witness list of the names, addresses, and phone numbers of each witness expected to testify at the hearing and a brief summary of the testimony of each witness that the party expects to introduce into evidence; and

d. Exchange an exhibit list identifying documents to be admitted into evidence at the hearing and provide a legible copy of all exhibits.

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

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

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

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

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

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

(d)1. Either party, without leave of the hearing officer, may depose a witness, upon reasonable notice to the witness and the opposing party, and submit to the opposing party interrogatories or

request for admissions.

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

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

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

1. Noncompliance with this subsection;

2. Failure of the authority to:

a. Timely appoint a hearing officer; or

b. Respond to a request for inspection of records; or

3. Failure of the debtor to submit information in accordance with paragraph (b) of this subsection.

(3) Order of proceeding.

(a) The hearing officer shall:

1. Convene an in-person or telephonic hearing;

2. Identify the parties to the action and the persons participating;

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

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

5. Accept into evidence any documentary evidence not objected to;

6. Solicit opening statements; and

7. Proceed with the taking of proof.

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

(4) Rules of evidence.

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

1. The hearing officer shall not admit evidence that is excludable as a violation of an individual's constitutional or statutory rights or a privilege recognized by the courts of the commonwealth.

2. Statutes or judicial rules pertaining to the admission of evidence in a judicial proceeding shall not apply to a hearing under this section.

3. The hearing officer may receive evidence deemed reliable and relevant, including evidence that would be considered hearsay if presented in court, except that hearsay evidence shall not be sufficient in itself to support the hearing officer's decision.

4. A copy of a document shall be admissible if:

a. There is minimal authentication to establish a reasonable presumption of its genuineness and accuracy; or

b. It is admitted without objection.

5. The hearing officer may exclude evidence deemed unreliable, irrelevant, incompetent, immaterial, or unduly repetitious.

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

(c) The hearing officer:

1. May take official notice of:

a. Statutes and administrative regulations;

b. Facts which are not in dispute; and

c. Generally-recognized technical or scientific facts;

2. Shall notify all parties, either before or during the hearing of a fact so noticed and its source; and

3. Shall give each party an opportunity to contest facts officially noticed.

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

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

(6) Burden of proof.

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

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

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

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

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

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

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

(a) Shall:

1. Consider the matter; and

2. Give deference to the prior decision by the authority in the same manner that a court would give deference in reviewing the decision of an administrative agency; and

(b) May reverse the prior decision if the debtor presents evidence that:

1. Circumstances have changed or new information is available; or

2. The prior decision:

a. Substantially disregarded or ignored the defense; or

b. Was arbitrary, capricious, not supported by the facts or made through fraud.

(4) If the debtor asserts as a defense a claim of entitlement to discharge of the particular debt pursuant to 34 C.F.R. 682.402, except for reason of bankruptcy, but has not previously sought discharge by the authority for that specific reason, the hearing officer shall stay the hearing for a period sufficient to permit the debtor to submit documentation to the authority for a determination of eligibility for entitlement to the discharge. At the expiration of the period of stay, the hearing officer shall review the circumstances and:

(a) Uphold the right of the authority to issue an order of wage withholding if the debtor has failed to submit documentation to the authority for review of entitlement to discharge;

(b) Dismiss the request for hearing if the debtor has submitted documentation and the authority has approved discharge of the debt; or

(c) Proceed with the hearing if the debtor submitted documentation and the authority denied discharge, except that the hearing officer shall consider the defense of entitlement to discharge in accordance with subsection (3) of this section.

(5) If the debtor asserts as a defense a claim that the debt was dischargeable in a previous bankruptcy pursuant to 11 U.S.C. 523(a)(8), but the debtor did not previously seek discharge by the bankruptcy court, the hearing officer shall stay the hearing for a period sufficient to permit the debtor to reopen the bankruptcy case. At the expiration of the period of stay, the hearing officer shall review the circumstances and:

(a) Uphold the right of the authority to issue an order of wage withholding if the debtor has failed to obtain the bankruptcy court's permission to reopen the bankruptcy case to seek discharge of the particular debt; or

(b) Dismiss the request for hearing if the bankruptcy court has reopened the bankruptcy case to consider discharge of the particu-

lar debt.

(6)(a) If the debtor asserts as a defense a claim that withholding of his disposable pay would constitute an extreme financial hardship, the debtor shall submit documentation of all available resources and actual expenses and shall have the burden of demonstrating the necessity of actual expenses.

(b) The hearing officer shall compare the debtor's available resources and the necessary expenses and current debt obligations of the debtor and debtor's dependents. The hearing officer shall determine that extreme financial hardship exists if the debtor currently is not able to provide at least minimal subsistence for the debtor and debtor's dependents that could be claimed on a federal income tax return. The hearing officer shall consider as available resources of the debtor income of the debtor, the debtor's spouse, and debtor's dependents from all sources, including nontaxable income and government benefits, expenses paid on behalf of the debtor by another person, and the cash value of any current liquid assets, such as bank accounts and investments. The hearing officer shall consider the claim of extreme financial hardship in accordance with the following presumptions.

1. Withholding of an amount of disposable pay shall constitute an extreme financial hardship if:

a. The debtor resides in the District of Columbia or a state other than Alaska or Hawaii and the debtor's available resources do not exceed the applicable poverty guideline, multiplied by 125 percent, based on the debtor's family size:

Size of family unit	Poverty guideline
1	$10,890
2	$14,710
3	$18,530
4	$22,350
5	$26,170
6	$29,990
7	$33,810
8	$37,630
Each additional person	Add $3,820

~~Size of family unit~~	~~Poverty guideline~~
~~1~~	~~$10,830~~
~~2~~	~~$14,570~~
~~3~~	~~$18,310~~
~~4~~	~~$22,050~~
~~5~~	~~$25,790~~
~~6~~	~~$29,530~~
~~7~~	~~$33,270~~
~~8~~	~~$37,010~~
~~Each additional person~~	~~Add $3,740~~

b. The debtor resides in Alaska and the debtor's available resources do not exceed the applicable poverty guideline, multiplied by 125 percent, based on the debtor's family size:

Size of family unit	Poverty guidelines
1	$13,600
2	$18,380
3	$23,160
4	$27,940
5	$32,720
6	$37,500
7	$42,280
8	$47,060
Each additional person	Add $4,780

~~Size of family unit~~	~~Poverty guidelines~~
~~1~~	~~$13,530~~
~~2~~	~~$18,210~~
~~3~~	~~$22,890~~
~~4~~	~~$27,570~~
~~5~~	~~$32,250~~
~~6~~	~~$36,930~~
~~7~~	~~$41,610~~
~~8~~	~~$46,290~~
~~Each additional person~~	~~Add $4,680~~

c. The debtor resides in Hawaii and the debtor's available resources do not exceed the applicable poverty guideline, multiplied by 125 percent, based on the debtor's family size:

Size of family unit	Poverty guidelines
1	$12,540
2	$16,930
3	$21,320
4	$25,710
5	$30,100
6	$34,490
7	$38,880
8	$43,270
Each additional person	Add $4,390

~~Size of family unit~~	~~Poverty guidelines~~
~~1~~	~~$12,460~~
~~2~~	~~$16,760~~
~~3~~	~~$21,060~~
~~4~~	~~$25,360~~
~~5~~	~~$29,660~~
~~6~~	~~$33,960~~
~~7~~	~~$38,260~~
~~8~~	~~$42,560~~
~~Each additional person~~	~~Add $4,300~~

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

Debtor's Available Resources	Less than $5,000	$5,000 to $9,999	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 to $69,999	$70,000 and over
Annual Expenditures									
Owned dwelling	2,181	1,342	1,876	2,306	3,505	4,333	5,364	7,139	13,755
Rented dwelling	4,503	3,649	3,877	3,930	3,697	3,616	3,599	3,963	2,384
Other lodging	259	48	127	201	394	368	439	815	2,004
Utilities, fuels, and public services	1,843	2,129	2,207	2,669	3,264	3,536	3,818	4,099	5,584
Household operations	322	371	386	384	855	600	822	856	2,102
Housekeeping and miscellaneous supplies	321	253	274	385	436	458	684	667	943
Household furnishings and equipment	492	503	485	698	671	974	1,173	1,359	2,553

Vehicle purchases (net outlay)	778	538	131	1,310	2,003	1,556	2,197	2,604	4,542
Gasoline and motor oil	764	746	684	922	1,231	1,566	2,002	2,197	3,165
Vehicle maintenance and repairs	162	353	251	352	370	568	605	827	1,247
Vehicle insurance	835	428	224	923	965	1,061	861	1,952	1,752
Vehicle rental, lease, license and other charges	171	125	137	176	277	311	354	503	1,274
Public transportation	521	166	246	257	351	399	476	631	1,260

[~~Debtor's Available Resources~~	~~Less than $5,000~~	~~$5,000 to $9,999~~	~~$10,000 to $14,999~~	~~$15,000 to $19,999~~	~~$20,000 to $29,999~~	~~$30,000 to $39,999~~	~~$40,000 to $49,999~~	~~$50,000 to $69,999~~	~~$70,000 and over~~
~~Annual Expenditures~~									
~~Owned dwelling~~	~~1,958~~	~~1,214~~	~~1,927~~	~~2,316~~	~~3,143~~	~~4,123~~	~~5,607~~	~~6,880~~	~~14,405~~
~~Rented dwelling~~	~~3,932~~	~~3,546~~	~~3,562~~	~~4,059~~	~~3,776~~	~~3,602~~	~~3,856~~	~~3,445~~	~~1,926~~
~~Other lodging~~	~~215~~	~~90~~	~~105~~	~~150~~	~~250~~	~~526~~	~~348~~	~~882~~	~~2,140~~
~~Utilities, fuels, and public services~~	~~1,666~~	~~1,805~~	~~2,210~~	~~2,569~~	~~3,061~~	~~3,342~~	~~3,647~~	~~4,046~~	~~5,551~~
~~Household operations~~	~~214~~	~~237~~	~~385~~	~~376~~	~~552~~	~~555~~	~~840~~	~~885~~	~~1,996~~
~~Housekeeping and miscellaneous supplies~~	~~297~~	~~270~~	~~245~~	~~310~~	~~423~~	~~426~~	~~544~~	~~669~~	~~936~~
~~Household furnishings and equipment~~	~~407~~	~~636~~	~~535~~	~~601~~	~~760~~	~~1,105~~	~~1,654~~	~~1,485~~	~~3,144~~
~~Vehicle purchases (net outlay)~~	~~303~~	~~384~~	~~656~~	~~1,316~~	~~2,203~~	~~1,285~~	~~1,481~~	~~3,080~~	~~4,264~~
~~Gasoline and motor oil~~	~~786~~	~~684~~	~~694~~	~~947~~	~~1,341~~	~~1,757~~	~~2,099~~	~~2,480~~	~~3,420~~
~~Vehicle maintenance and repairs~~	~~252~~	~~299~~	~~232~~	~~342~~	~~381~~	~~580~~	~~617~~	~~778~~	~~1,217~~
~~Vehicle insurance~~	~~693~~	~~70~~	~~379~~	~~919~~	~~999~~	~~779~~	~~1,141~~	~~1,512~~	~~1,706~~
~~Vehicle rental, lease, license and other charges~~	~~207~~	~~103~~	~~172~~	~~155~~	~~282~~	~~287~~	~~379~~	~~483~~	~~1,295~~
~~Public transportation~~	~~534~~	~~166~~	~~195~~	~~277~~	~~358~~	~~409~~	~~475~~	~~516~~	~~1,423~~]

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

	New York	Philadelphia	Boston
Owned dwellings	9,449	9,319	8,403
Rented dwellings	4,859	2,965	3,372
Other lodging	1,173	1,313	1,081
Utilities, fuels, and public services	4,309	4,444	4,248
Household operations	1,584	1,021	1,460
Housekeeping and miscellaneous supplies	643	694	598
Household furnishings and equipment	1,642	1,379	1,639
Vehicle purchases (net outlay)	2,321	2,037	2,818
Gasoline and motor oil	1,943	2,240	2,125
Other vehicle expenses (repairs, insurance, lease, license, and other charges)	3,137	3,156	2,913
Public transportation	1,093	769	735

	[~~New York~~	~~Philadelphia~~	~~Boston~~
~~Owned dwellings~~	~~9,760~~	~~8,790~~	~~8,804~~
~~Rented dwellings~~	~~4,387~~	~~2,721~~	~~3,155~~
~~Other lodging~~	~~1,325~~	~~1,126~~	~~1,092~~
~~Utilities, fuels, and public services~~	~~4,146~~	~~4,356~~	~~4,067~~
~~Household operations~~	~~1,365~~	~~1,131~~	~~1,215~~
~~Housekeeping and miscellaneous supplies~~	~~610~~	~~701~~	~~527~~

~~Household furnishings and equipment~~	~~1,848~~	~~2,044~~	~~1,817~~
~~Vehicle purchases (net outlay)~~	~~2,102~~	~~2,455~~	~~2,572~~
~~Gasoline and motor oil~~	~~2,051~~	~~2,447~~	~~2,224~~
~~Other vehicle expenses (repairs, insurance, lease, license, and other charges)~~	~~2,928~~	~~2,977~~	~~2,615~~
~~Public transportation~~	~~1,168~~	~~779~~	~~657~~]

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

Debtor's Available Resources	Less than $5,000	$5,000 to $9,999	$10,000 to $14,999	$15,000 to $19, 999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 to $69,999	$70, 000 and over
Annual Expenditures									
Owned dwelling	1,611	1,187	1,676	2,019	3,113	3,990	5,260	6,905	11,358
Rented dwellings	2,719	3,153	2,898	2,955	2,544	2,514	2,294	1,717	975
Other lodging	285	192	148	225	263	238	361	476	1,393
Utilities, fuels and public services	1,446	1,648	2,196	2,464	2,966	3,258	3,466	3,888	4,623
Household operations	216	212	302	405	441	501	532	844	1,534
Housekeeping and miscellaneous supplies	244	291	373	397	557	541	513	620	1,083
Household furnishings and equipment	433	518	605	570	895	1,051	1,117	1,467	2,729
Vehicle purchases (net outlay)	457	1,118	475	1,165	1,477	2,566	1,879	2,955	5,346
Gasoline and motor oil	926	886	991	1,220	1,592	1,952	2,218	2,689	3,453
Vehicle maintenance and repairs	250	248	261	434	472	570	583	746	1,116
Vehicle insurance	246	353	487	351	673	718	831	870	1,650
Vehicle lease, license, and other charges	146	183	139	173	277	348	377	533	864
Public transportation	122	132	186	215	175	231	172	354	849

[~~Debtor's Available Resources~~	~~Less than $5,000~~	~~$5,000 to $9,999~~	~~$10,000 to $14,999~~	~~$15,000 to $19, 999~~	~~$20,000 to $29,999~~	~~$30,000 to $39,999~~	~~$40,000 to $49,999~~	~~$50,000 to $69,999~~	~~$70, 000 and over~~
~~Annual Expenditures~~									
~~Owned dwelling~~	~~1,260~~	~~994~~	~~1,465~~	~~1,916~~	~~2,901~~	~~3,852~~	~~4,954~~	~~6,829~~	~~11,817~~
~~Rented dwellings~~	~~2,679~~	~~2,862~~	~~2,914~~	~~2,950~~	~~2,547~~	~~2,560~~	~~2,448~~	~~1,634~~	~~864~~
~~Other lodging~~	~~227~~	~~165~~	~~139~~	~~196~~	~~221~~	~~218~~	~~369~~	~~478~~	~~1,549~~
~~Utilities, fuels and public services~~	~~1,312~~	~~1,497~~	~~2,231~~	~~2,481~~	~~2,872~~	~~3,131~~	~~3,330~~	~~3,778~~	~~4,636~~
~~Household operations~~	~~148~~	~~173~~	~~310~~	~~357~~	~~483~~	~~444~~	~~556~~	~~813~~	~~1,680~~
~~Housekeeping and miscellaneous supplies~~	~~229~~	~~217~~	~~318~~	~~346~~	~~476~~	~~580~~	~~506~~	~~582~~	~~1,051~~
~~Household furnishings and equipment~~	~~415~~	~~643~~	~~584~~	~~656~~	~~806~~	~~987~~	~~1,180~~	~~2,024~~	~~2,874~~
~~Vehicle purchases (net outlay)~~	~~628~~	~~896~~	~~747~~	~~1,515~~	~~1,824~~	~~2,762~~	~~1,679~~	~~2,969~~	~~5,806~~
~~Gasoline and motor oil~~	~~938~~	~~956~~	~~1,101~~	~~1,365~~	~~1,709~~	~~2,068~~	~~2,439~~	~~2,960~~	~~3,824~~
~~Vehicle maintenance and repairs~~	~~260~~	~~207~~	~~256~~	~~398~~	~~495~~	~~532~~	~~571~~	~~749~~	~~1,116~~
~~Vehicle insurance~~	~~373~~	~~282~~	~~413~~	~~454~~	~~779~~	~~645~~	~~881~~	~~988~~	~~1,466~~
~~Vehicle lease, license, and other charges~~	~~120~~	~~194~~	~~172~~	~~165~~	~~270~~	~~307~~	~~406~~	~~581~~	~~949~~
~~Public transportation~~	~~146~~	~~114~~	~~203~~	~~266~~	~~162~~	~~222~~	~~214~~	~~388~~	~~860~~]

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

	Chicago	Detroit	Minneapolis St. Paul	Cleveland
Owned dwelling	9,379	6,658	8,555	5,716
Rented dwelling	2,771	2,200	2,557	2,286
Other lodging	966	777	740	818

Utilities, fuels, and public services	4,052	3,791	3,513	3,837
Household operations	1,133	933	965	796
Housekeeping and miscellaneous supplies	624	597	730	658
Household furnishings and equipment	1,695	1,388	2,104	1,372
Vehicle purchases (net outlay)	3,101	2,793	2,911	2,098
Gasoline and motor oil	2,364	2,624	2,350	2,049
Other vehicle expenses (repairs, insurance, lease, license, and other charges	2,636	3,674	2,973	2,409
Public transportation	739	373	598	454

	[~~Chicago~~	~~Detroit~~	~~Minneapolis St. Paul~~	~~Cleveland~~
~~Owned dwelling~~	~~9,377~~	~~6,591~~	~~8,574~~	~~6,433~~
~~Rented dwelling~~	~~2,639~~	~~2,155~~	~~2,455~~	~~2,337~~
~~Other lodging~~	~~1,019~~	~~726~~	~~689~~	~~991~~
~~Utilities, fuels, and public services~~	~~4,062~~	~~3,654~~	~~3,482~~	~~3,839~~
~~Household operations~~	~~1,100~~	~~665~~	~~1,553~~	~~881~~
~~Housekeeping and miscellaneous supplies~~	~~621~~	~~632~~	~~670~~	~~651~~
~~Household furnishings and equipment~~	~~2,013~~	~~1,444~~	~~2,420~~	~~1,081~~
~~Vehicle purchases (net outlay)~~	~~3,075~~	~~2,242~~	~~3,950~~	~~2,995~~
~~Gasoline and motor oil~~	~~2,547~~	~~2,946~~	~~2,432~~	~~2,384~~
~~Other vehicle expenses (repairs, insurance, lease, license, and other charges~~	~~2,559~~	~~3,606~~	~~2,702~~	~~2,622~~
~~Public transportation~~	~~767~~	~~406~~	~~594~~	~~365~~]

4.a. If the debtor resides in Alabama, Arkansas, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, or West Virginia, except for a metropolitan area listed in clause b of this subparagraph, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less than $5,000	$5,000 to $9,999	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 to $69,999	$70,000 and over
Owned dwelling	2,189	1,190	1,575	2,338	2,564	3,507	4,435	5,756	11,255
Rented dwelling	2,670	2,323	2,789	2,673	2,769	2,781	2,860	2,320	1,518
Other lodging	135	29	117	95	158	235	266	460	1,349
Utilities, fuels, and other charges	2,245	2,238	2,620	2,899	3,144	3,344	3,574	4,020	4,865
Household operations	350	215	367	485	470	580	671	901	1,869
Housekeeping and miscellaneous supplies	314	252	392	401	437	526	499	614	1,106
Household furnishings and equipment	699	457	459	759	750	945	1,137	1,593	2,950
Vehicle purchases (net outlay)	742	581	932	1,192	1,176	1,856	2,339	3,046	4,993
Gasoline and motor oil	1,317	956	1,236	1,496	1,951	2,229	2,439	2,885	3,707
Vehicle maintenance and repairs	264	240	249	358	464	511	518	729	1,071
Vehicle insurance	627	342	615	720	797	1,125	1,077	1,265	1,642
Vehicle lease, license, and other charges	125	89	88	160	128	175	221	308	583
Public transportation	117	65	115	89	124	152	175	242	757
[~~Debtor's Available Resources~~	~~Less than $5,000~~	~~$5,000 to $9,999~~	~~$10,000 to $14,999~~	~~$15,000 to $19,999~~	~~$20,000 to $29,999~~	~~$30,000 to $39,999~~	~~$40,000 to $49,999~~	~~$50,000 to $69,999~~	~~$70,000 and over~~
~~Owned dwelling~~	~~2,228~~	~~1,166~~	~~1,448~~	~~2,473~~	~~2,779~~	~~3,189~~	~~4,246~~	~~5,774~~	~~11,518~~
~~Rented dwelling~~	~~2,580~~	~~2,319~~	~~2,691~~	~~2,449~~	~~2,669~~	~~2,865~~	~~2,651~~	~~2,252~~	~~1,220~~
~~Other lodging~~	~~163~~	~~49~~	~~85~~	~~117~~	~~164~~	~~196~~	~~274~~	~~415~~	~~1,180~~
~~Utilities, fuels, and other~~	~~2,281~~	~~2,242~~	~~2,574~~	~~2,738~~	~~2,997~~	~~3,267~~	~~3,484~~	~~3,872~~	~~4,774~~

~~charges~~									
~~Household operations~~	~~264~~	~~172~~	~~353~~	~~488~~	~~427~~	~~517~~	~~603~~	~~937~~	~~1,874~~
~~Housekeeping and miscellaneous supplies~~	~~271~~	~~277~~	~~388~~	~~369~~	~~419~~	~~454~~	~~526~~	~~607~~	~~1,022~~
~~Household furnishings and equipment~~	~~766~~	~~804~~	~~557~~	~~763~~	~~778~~	~~848~~	~~1,176~~	~~1,751~~	~~2,991~~
~~Vehicle purchases (net outlay)~~	~~737~~	~~532~~	~~959~~	~~1,626~~	~~1,534~~	~~2,091~~	~~2,587~~	~~3,398~~	~~5,401~~
~~Gasoline and motor oil~~	~~1,261~~	~~1,144~~	~~1,307~~	~~1,621~~	~~2,108~~	~~2,421~~	~~2,669~~	~~3,144~~	~~4,007~~
~~Vehicle maintenance and repairs~~	~~223~~	~~216~~	~~264~~	~~390~~	~~457~~	~~510~~	~~584~~	~~714~~	~~1,134~~
~~Vehicle insurance~~	~~602~~	~~445~~	~~693~~	~~658~~	~~887~~	~~878~~	~~1,135~~	~~1,330~~	~~1,543~~
~~Vehicle lease, license, and other charges~~	~~92~~	~~100~~	~~80~~	~~143~~	~~147~~	~~169~~	~~227~~	~~299~~	~~601~~
~~Public transportation~~	~~137~~	~~60~~	~~113~~	~~95~~	~~156~~	~~168~~	~~143~~	~~300~~	~~810~~]

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

	Washington, D.C.	Baltimore	Atlanta	Miami	Dallas Forth Worth	Houston
Owned dwelling	11,447	9,623	7,313	7,115	6,248	7,326
Rented dwelling	4,180	3,329	2,857	4,442	3,533	2,789
Other lodging	1,216	665	469	1,036	473	661
Utilities, fuels, and public services	3,977	4,209	3,899	3,740	4,275	4,505
Household operations	1,842	879	915	1,025	1,201	1,242
Housekeeping and miscellaneous supplies	767	860	522	558	719	634
Household furnishings and equipment	2,193	1,230	1,096	1,091	1,749	1,710
Vehicle purchases (net outlay)	3,028	1,452	1,597	2,921	2,877	3,874
Gasoline and motor oil	2,465	2,444	2,631	2,680	2,616	2,980
Other vehicle expenses (repairs, insurance, lease, license, and other charges)	2,864	2,178	2,171	2,318	2,806	3,421
Public transportation	1,206	547	360	508	390	568

	[~~Washington, D.C.~~	~~Baltimore~~	~~Atlanta~~	~~Miami~~	~~Dallas Forth Worth~~	~~Houston~~
~~Owned dwelling~~	~~12,435~~	~~9,443~~	~~7,421~~	~~7,507~~	~~6,339~~	~~6,906~~
~~Rented dwelling~~	~~3,691~~	~~2,912~~	~~2,923~~	~~4,118~~	~~3,142~~	~~2,834~~
~~Other lodging~~	~~1,041~~	~~548~~	~~582~~	~~470~~	~~396~~	~~619~~
~~Utilities, fuels, and public services~~	~~4,001~~	~~4,170~~	~~3,811~~	~~3,576~~	~~4,307~~	~~4,332~~
~~Household operations~~	~~1,774~~	~~881~~	~~820~~	~~1,180~~	~~1,093~~	~~1,018~~
~~Housekeeping and miscellaneous supplies~~	~~752~~	~~822~~	~~447~~	~~587~~	~~695~~	~~677~~
~~Household furnishings and equipment~~	~~2,433~~	~~1,478~~	~~1,271~~	~~1,022~~	~~1,767~~	~~1,674~~
~~Vehicle purchases (net outlay)~~	~~3,492~~	~~2,396~~	~~2,101~~	~~3,049~~	~~4,196~~	~~4,070~~
~~Gasoline and motor oil~~	~~2,666~~	~~2,665~~	~~2,821~~	~~2,863~~	~~2,733~~	~~3,274~~
~~Other vehicle expenses (repairs, insurance, lease, license, and other charges)~~	~~3,190~~	~~2,191~~	~~1,893~~	~~2,076~~	~~2,861~~	~~3,064~~
~~Public transportation~~	~~1,103~~	~~542~~	~~501~~	~~518~~	~~350~~	~~472~~]

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

Debtor's Available Resources	Less than $5,000	$5,000 to $9,999	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 to $69,999	$70,000 and over
Annual Expenditures									

Owned dwelling	4,178	1,983	2,095	2,269	3,573	3,997	5,228	7,403	14,275
Rented dwelling	3,489	4,683	3,946	4,697	4,552	4,827	4,643	4,033	3,133
Other lodging	308	174	135	188	276	295	325	465	1,433
Utilities, fuels, and public services	2,077	1,764	1,955	2,244	2,564	2,903	3,143	3,514	4,452
Household operations	642	297	419	830	575	639	661	956	1,999
Housekeeping and miscellaneous supplies	416	335	519	357	470	462	519	640	885
Household furnishings and equipment	953	670	909	831	821	1,039	1,498	1,436	2,853
Vehicle purchases (net outlay)	895	697	751	934	1,679	2,487	1,833	2,920	3,845
Gasoline and motor oil	1,162	1,100	1,059	1,246	1,612	1,932	2,324	2,560	3,277
Vehicle maintenance and repairs	381	292	316	459	533	670	769	972	1,263
Vehicle insurance	106	133	577	827	556	949	843	1,279	1,224
Vehicle lease, license, and other charges	213	156	179	180	289	301	498	453	898
Public transportation	383	602	198	266	271	329	358	531	1,234

[~~Debtor's Available Resources~~	~~Less than $5,000~~	~~$5,000 to $9,999~~	~~$10,000 to $14,999~~	~~$15,000 to $19,999~~	~~$20,000 to $29,999~~	~~$30,000 to $39,999~~	~~$40,000 to $49,999~~	~~$50,000 to $69,999~~	~~$70,000 and over~~
~~Annual Expenditures~~									
~~Owned dwelling~~	~~3,481~~	~~1,631~~	~~1,982~~	~~2,039~~	~~3,404~~	~~4,048~~	~~5,225~~	~~8,082~~	~~14,856~~
~~Rented dwelling~~	~~3,831~~	~~4,309~~	~~3,641~~	~~5,019~~	~~4,744~~	~~4,838~~	~~4,344~~	~~3,967~~	~~2,833~~
~~Other lodging~~	~~238~~	~~173~~	~~139~~	~~177~~	~~241~~	~~332~~	~~366~~	~~523~~	~~1,608~~
~~Utilities, fuels, and public services~~	~~1,838~~	~~1,692~~	~~1,927~~	~~2,080~~	~~2,445~~	~~2,828~~	~~3,066~~	~~3,475~~	~~4,436~~
~~Household operations~~	~~334~~	~~447~~	~~417~~	~~550~~	~~481~~	~~568~~	~~592~~	~~1,003~~	~~2,140~~
~~Housekeeping and miscellaneous supplies~~	~~419~~	~~266~~	~~506~~	~~288~~	~~434~~	~~551~~	~~587~~	~~689~~	~~1,065~~
~~Household furnishings and equipment~~	~~744~~	~~690~~	~~715~~	~~733~~	~~1,175~~	~~1,093~~	~~1,609~~	~~1,531~~	~~3,247~~
~~Vehicle purchases (net outlay)~~	~~506~~	~~1,189~~	~~978~~	~~1,481~~	~~2,101~~	~~2,312~~	~~2,306~~	~~4,345~~	~~4,754~~
~~Gasoline and motor oil~~	~~1,298~~	~~1,040~~	~~1,044~~	~~1,357~~	~~1,699~~	~~2,066~~	~~2,474~~	~~2,800~~	~~3,557~~
~~Vehicle maintenance and repairs~~	~~297~~	~~253~~	~~317~~	~~390~~	~~554~~	~~696~~	~~706~~	~~901~~	~~1,325~~
~~Vehicle insurance~~	~~1,420~~	~~291~~	~~452~~	~~529~~	~~584~~	~~1,020~~	~~1,423~~	~~1,069~~	~~1,515~~
~~Vehicle lease, license, and other charges~~	~~231~~	~~136~~	~~171~~	~~141~~	~~252~~	~~321~~	~~424~~	~~445~~	~~979~~
~~Public transportation~~	~~258~~	~~650~~	~~214~~	~~299~~	~~244~~	~~428~~	~~536~~	~~497~~	~~1,306~~]

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

	Los Angeles	San Francisco	San Diego	Seattle	Phoenix
Owned dwelling	8,271	11,227	7,741	8,727	7,695
Rented dwelling	6,086	6,508	6,973	4,069	2,981
Other lodging	580	1,361	432	1,033	573
Utilities, fuels, and public services	3,257	3,1239	2,989	3,554	3,892
Household operations	1,370	1,344	1,571	1,592	1,174
Housekeeping and miscellaneous supplies	643	585	678	741	633
Household furnishings and equipment	1,603	1,899	1,823	2,312	1,813
Vehicle purchases (net outlay)	2,513	2,748	1,941	3,395	2,887
Gasoline and motor oil	2,667	2,235	2,412	2,454	2,658
Other vehicle expenses (repairs, insurance, lease, license, and other charges)	2,989	3,252	2,373	2,589	3,275
Public transportation	615	1,300	445	943	509

	[~~Los Angeles~~	~~San Francisco~~	~~San Diego~~	~~Seattle~~	~~Phoenix~~
~~Owned dwelling~~	~~9,077~~	~~11,238~~	~~8,903~~	~~8,883~~	~~7,806~~
~~Rented dwelling~~	~~5,857~~	~~6,208~~	~~6,432~~	~~3,950~~	~~3,201~~
~~Other lodging~~	~~587~~	~~1,355~~	~~426~~	~~1,057~~	~~705~~
~~Utilities, fuels, and public services~~	~~3,364~~	~~3,204~~	~~2,861~~	~~3,485~~	~~3,874~~
~~Household operations~~	~~1,343~~	~~1,567~~	~~1,581~~	~~1,103~~	~~1,362~~
~~Housekeeping and miscellaneous supplies~~	~~623~~	~~600~~	~~573~~	~~641~~	~~655~~
~~Household furnishings and equipment~~	~~1,794~~	~~1,939~~	~~1,787~~	~~2,396~~	~~1,889~~
~~Vehicle purchases (net outlay)~~	~~2,883~~	~~2,973~~	~~1,429~~	~~3,113~~	~~5,074~~
~~Gasoline and motor oil~~	~~2,913~~	~~2,589~~	~~2,593~~	~~2,608~~	~~2,957~~
~~Other vehicle expenses (repairs, insurance, lease, license, and other charges)~~	~~2,826~~	~~3,550~~	~~2,020~~	~~2,816~~	~~2,998~~
~~Public transportation~~	~~604~~	~~1,479~~	~~514~~	~~1,107~~	~~602~~]

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

Debtor's Available Resources	Less than $5,000	$5,000 to $9,999	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 to $69,999	$70,000 and over
Food	2,807	2,459	2,739	2,649	3,009	3,592	4,032	4,455	6,371
Apparel	665	515	936	610	785	871	1,080	1,193	1,935
Health insurance	492	536	1,172	1,469	1,286	1,176	1,058	1,210	1,441
Medical services	185	205	297	347	373	483	502	674	767
Prescription drugs	151	196	223	426	387	366	340	279	363
Medical supplies	60	39	51	65	70	71	59	73	117
Personal care products and services	246	201	248	287	340	387	431	550	647
Education	1,196	848	430	258	337	592	426	377	732
Life and other personal insurance	59	52	105	82	88	112	110	150	288

[~~Debtor's Available Resources~~	~~Less than $5,000~~	~~$5,000 to $9,999~~	~~$10,000 to $14,999~~	~~$15,000 to $19,999~~	~~$20,000 to $29,999~~	~~$30,000 to $39,999~~	~~$40,000 to $49,999~~	~~$50,000 to $69,999~~	~~$70,000 and over~~
~~Food~~	~~2,488~~	~~2,269~~	~~2,573~~	~~2,562~~	~~2,990~~	~~3,654~~	~~4,204~~	~~4,609~~	~~6,282~~
~~Apparel~~	~~710~~	~~539~~	~~651~~	~~571~~	~~739~~	~~980~~	~~1,187~~	~~1,468~~	~~1,891~~
~~Health insurance~~	~~451~~	~~511~~	~~1,190~~	~~1,334~~	~~1,237~~	~~1,006~~	~~1,000~~	~~1,117~~	~~1,166~~
~~Medical services~~	~~146~~	~~169~~	~~234~~	~~346~~	~~370~~	~~472~~	~~419~~	~~737~~	~~748~~
~~Prescription drugs~~	~~164~~	~~208~~	~~244~~	~~429~~	~~372~~	~~312~~	~~280~~	~~343~~	~~392~~
~~Medical supplies~~	~~38~~	~~30~~	~~44~~	~~58~~	~~69~~	~~70~~	~~83~~	~~91~~	~~138~~
~~Personal care products and services~~	~~234~~	~~209~~	~~243~~	~~313~~	~~357~~	~~406~~	~~450~~	~~540~~	~~688~~
~~Education~~	~~1,495~~	~~1,019~~	~~459~~	~~309~~	~~413~~	~~390~~	~~506~~	~~379~~	~~926~~
~~Life and other personal insurance~~	~~31~~	~~53~~	~~94~~	~~108~~	~~187~~	~~123~~	~~111~~	~~158~~	~~263~~]

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

Debtor's Available Resources	Less than $5,000	$5,000 to $9,999	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 to $69,999	$70,000 and over
Annual Expenditures									
Food	4,521	4,284	4,228	3,444	4,724	5,112	5,305	6,088	6,595
Apparel	837	1,033	1,056	840	895	1,301	949	1,522	2,587
Health insurance	1,424	1,286	1,370	1,633	2,256	2,431	2,461	2,274	2,459
Medical services	665	333	331	440	652	628	763	998	1,241
Prescription Drugs	525	276	364	516	708	698	767	722	714
Medical supplies	139	53	73	90	110	115	134	169	199
Personal care products	476	267	274	339	374	475	517	583	988

and services									
Education	636	251	393	310	320	349	419	548	1,613
Life and other personal insurance	252	149	133	129	193	255	270	360	696

[~~Debtor's Available Resources~~	~~Less than $5,000~~	~~$5,000 to $9,999~~	~~$10,000 to $14,999~~	~~$15,000 to $19,999~~	~~$20,000 to $29,999~~	~~$30,000 to $39,999~~	~~$40,000 to $49,999~~	~~$50,000 to $69,999~~	~~$70,000 and over~~
~~Annual Expenditures~~									
~~Food~~	~~4,514~~	~~3,814~~	~~4,204~~	~~3,496~~	~~4,492~~	~~4,954~~	~~5,199~~	~~6,113~~	~~8,640~~
~~Apparel~~	~~1,010~~	~~877~~	~~1,045~~	~~911~~	~~910~~	~~1,222~~	~~1,107~~	~~1,743~~	~~2,849~~
~~Health insurance~~	~~1,361~~	~~1,088~~	~~1,237~~	~~1,791~~	~~2,144~~	~~2,353~~	~~2,142~~	~~2,043~~	~~2,273~~
~~Medical services~~	~~565~~	~~292~~	~~413~~	~~377~~	~~783~~	~~658~~	~~827~~	~~921~~	~~1,232~~
~~Prescription Drugs~~	~~525~~	~~342~~	~~343~~	~~645~~	~~692~~	~~765~~	~~758~~	~~675~~	~~707~~
~~Medical supplies~~	~~145~~	~~43~~	~~68~~	~~65~~	~~108~~	~~122~~	~~150~~	~~147~~	~~200~~
~~Personal care products and services~~	~~389~~	~~294~~	~~306~~	~~285~~	~~364~~	~~452~~	~~531~~	~~601~~	~~999~~
~~Education~~	~~291~~	~~293~~	~~416~~	~~350~~	~~297~~	~~267~~	~~512~~	~~636~~	~~1,562~~
~~Life and other personal insurance~~	~~185~~	~~78~~	~~114~~	~~159~~	~~215~~	~~257~~	~~243~~	~~327~~	~~655~~]

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

Debtor's Available Resources	Less than $5,000	$5,000 to $9,999	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 to $69,999	$70,000 and over
Food	5,108	3,844	4,780	4,551	4,819	5,440	6,415	7,218	9,895
Apparel	1,109	1,485	1,223	1,128	1,427	1,595	1,679	2,018	3,023
Health insurance	677	356	699	593	845	1,299	1,405	2,002	2,381
Medical services	269	95	177	197	386	476	426	704	1,199
Prescription drugs	236	238	211	215	301	389	447	508	600
Medical supplies	15	183	39	98	53	55	83	161	181
Personal care products and services	355	253	403	315	407	520	590	652	1,017
Education	273	474	335	171	242	687	549	891	2,745
Life and other personal insurance	98	29	74	76	143	170	234	310	687

[~~Debtor's Available Resources~~	~~Less than $5,000~~	~~$5,000 to $9,999~~	~~$10,000 to $14,999~~	~~$15,000 to $19,999~~	~~$20,000 to $29,999~~	~~$30,000 to $39,999~~	~~$40,000 to $49,999~~	~~$50,000 to $69,999~~	~~$70,000 and over~~
~~Food~~	~~5,223~~	~~3,822~~	~~4,343~~	~~4,575~~	~~4,980~~	~~5,647~~	~~6,425~~	~~6,787~~	~~9,557~~
~~Apparel~~	~~1,914~~	~~1,170~~	~~1,249~~	~~1,257~~	~~1,517~~	~~1,609~~	~~2,025~~	~~1,897~~	~~3,214~~
~~Health insurance~~	~~797~~	~~519~~	~~594~~	~~635~~	~~839~~	~~1,210~~	~~1,575~~	~~1,760~~	~~2,075~~
~~Medical services~~	~~191~~	~~133~~	~~163~~	~~202~~	~~312~~	~~426~~	~~535~~	~~764~~	~~1,039~~
~~Prescription drugs~~	~~238~~	~~232~~	~~174~~	~~228~~	~~291~~	~~329~~	~~583~~	~~478~~	~~617~~
~~Medical supplies~~	~~103~~	~~505~~	~~40~~	~~69~~	~~43~~	~~65~~	~~71~~	~~120~~	~~183~~
~~Personal care products and services~~	~~368~~	~~269~~	~~307~~	~~316~~	~~401~~	~~450~~	~~635~~	~~551~~	~~991~~
~~Education~~	~~530~~	~~536~~	~~201~~	~~211~~	~~356~~	~~385~~	~~509~~	~~705~~	~~2,524~~
~~Life and other personal insurance~~	~~88~~	~~85~~	~~135~~	~~57~~	~~151~~	~~143~~	~~264~~	~~288~~	~~681~~]

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

Debtor's Available Resources	Less than $10,000	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 to $69,999	$70,000 and over
Food	5,648	5,066	4,855	5,595	6,555	6,148	7,305	11,358
Apparel	2,188	1,125	1,317	1,783	1,874	1,793	1,820	3,245
Health insurance	893	366	417	648	1,233	1,355	1,714	2,253
Medical services	484	869	221	354	348	455	773	1,230
Prescription drugs	171	193	108	193	285	347	380	558
Medical supplies	29	72	25	63	65	74	87	163
Personal care products and services	566	312	330	362	550	427	555	1,091

Education	2,561	854	146	282	393	500	785	2,833
Life and other personal insurance	106	75	121	116	178	182	246	567

[~~Debtor's Available Resources~~	~~Less than $10,000~~	~~$10,000 to $14,999~~	~~$15,000 to $19,999~~	~~$20,000 to $29,999~~	~~$30,000 to $39,999~~	~~$40,000 to $49,999~~	~~$50,000 to $69,999~~	~~$70,000 and over~~
~~Food~~	~~5,028~~	~~5,250~~	~~4,539~~	~~5,735~~	~~6,476~~	~~6,721~~	~~7,556~~	~~11,152~~
~~Apparel~~	~~2,128~~	~~1,625~~	~~1,275~~	~~2,086~~	~~2,220~~	~~1,508~~	~~1,828~~	~~3,463~~
~~Health insurance~~	~~712~~	~~425~~	~~476~~	~~698~~	~~1,058~~	~~1,424~~	~~1,631~~	~~2,168~~
~~Medical services~~	~~584~~	~~333~~	~~177~~	~~296~~	~~350~~	~~664~~	~~730~~	~~1,184~~
~~Prescription drugs~~	~~167~~	~~189~~	~~69~~	~~220~~	~~289~~	~~328~~	~~399~~	~~523~~
~~Medical supplies~~	~~28~~	~~56~~	~~25~~	~~73~~	~~64~~	~~95~~	~~99~~	~~158~~
~~Personal care products and services~~	~~361~~	~~264~~	~~283~~	~~377~~	~~534~~	~~399~~	~~617~~	~~1,066~~
~~Education~~	~~805~~	~~603~~	~~306~~	~~325~~	~~443~~	~~542~~	~~800~~	~~2,486~~
~~Life and other personal insurance~~	~~149~~	~~61~~	~~70~~	~~115~~	~~142~~	~~195~~	~~256~~	~~623~~]

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

Debtor's Available Resources	Less than $10,000	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 to $69,999	$70,000 and over
Food	7,343	6,331	7,004	7,008	7,019	7,584	8,822	12,470
Apparel	2,250	1,897	1,935	2,386	1,934	2,048	2,275	3,549
Health insurance	1,076	367	383	572	932	1,179	1,577	2,182
Medical services	542	147	223	177	433	597	790	1,260
Prescription drugs	277	97	187	209	249	287	417	584
Medical supplies	27	22	48	51	54	83	121	172
Personal care products and services	423	285	403	539	416	479	590	1,033
Education	1,197	173	544	270	468	594	779	2,929
Life and other personal insurance	87	12	110	56	125	281	213	594

[~~Debtor's Available Resources~~	~~Less than $10,000~~	~~$10,000 to $14,999~~	~~$15,000 to $19,999~~	~~$20,000 to $29,999~~	~~$30,000 to $39,999~~	~~$40,000 to $49,999~~	~~$50,000 to $69,999~~	~~$70,000 and over~~
~~Food~~	~~6,307~~	~~4,858~~	~~6,180~~	~~5,695~~	~~6,685~~	~~7,319~~	~~8,542~~	~~12,284~~
~~Apparel~~	~~2,129~~	~~2,467~~	~~1,434~~	~~1,783~~	~~1,773~~	~~1,810~~	~~2,295~~	~~3,792~~
~~Health insurance~~	~~608~~	~~308~~	~~313~~	~~586~~	~~826~~	~~1,174~~	~~1,411~~	~~2,099~~
~~Medical services~~	~~336~~	~~146~~	~~275~~	~~170~~	~~636~~	~~486~~	~~959~~	~~1,210~~
~~Prescription drugs~~	~~170~~	~~102~~	~~88~~	~~203~~	~~279~~	~~258~~	~~430~~	~~555~~
~~Medical supplies~~	~~35~~	~~14~~	~~31~~	~~66~~	~~104~~	~~59~~	~~123~~	~~166~~
~~Personal care products and services~~	~~329~~	~~359~~	~~378~~	~~342~~	~~419~~	~~473~~	~~614~~	~~1,078~~
~~Education~~	~~286~~	~~248~~	~~257~~	~~276~~	~~296~~	~~339~~	~~619~~	~~2,605~~
~~Life and other personal insurance~~	~~63~~	~~35~~	~~63~~	~~62~~	~~105~~	~~182~~	~~244~~	~~626~~]

Section 5. (1) An administrative order issued by the authority to withhold disposable pay shall be served upon the debtor's employer personally or by mail. A notice of the issuance of the order shall be provided to the debtor by regular first class mail. The order shall require the withholding and delivery to the authority of not more than fifteen (15) percent of the debtor's disposable pay, except that a greater percentage may be deducted upon the written consent of the debtor.

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

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

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

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

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

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

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

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

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

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

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

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

KRISTI P. NELSON, Chair

APPROVED BY AGENCY: May 26, 2011

FILED WITH LRC: June 14, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, July 25, 2011, at 10 a.m. at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Monday, August 1, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-7293, phone (502) 696-7298, fax (502) 6960-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Diana L. Barber, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures to be followed by the Authority in garnishing a defaulted student loan borrower's wages for payment of the borrower's student loan debt, as well as the procedures for a borrower to request a hearing on a garnishment and procedures for conducting that hearing.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the requirements of the Higher Education Act of 1965, as amended, and its accompanying regulations regarding the collection of defaulted student loan debts.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes permit the Authority to collect defaulted student loan debts through administrative wage garnishment and to conduct administrative hearings relating to the wage garnishment.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by setting forth the procedures to be followed during the administrative wage garnishment process as well as the hearing process.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation will reflect the current poverty level and consumer expenditure figures published by the federal government. The amendment will also specify the hours during which a hearing requested under this regulation shall be conducted.

(b) The necessity of the amendment to this administrative regulation: Current poverty level and consumer expenditure figures are necessary to assure a current and accurate standard for determining the validity of a claim of extreme financial hardship. Further, it is necessary to advise stakeholders of the hours available for hearings under the regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the requirements of federal and state law that authorize the Authority to promulgate regulations establishing the procedures for the conducting of hearings regarding administrative wage garnishment by the Authority.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes by establishing an objective standard for extreme financial hardship that will be based on current economic data as established by the federal government and by further defining procedures for the holding of hearings hereunder.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Student loan borrowers that have defaulted on their repayment obligations, whose wages are otherwise eligible for administrative wage garnishment and who are claiming that such garnishment will cause them extreme financial hardship. During calendar year 2010, approximately 2,855 notices of wage garnishment were sent and received by student loan borrowers. During the same period, 54 of those student loan borrowers requested a hearing regarding the wage garnishment. Of the 54 hearing requests received, 50 were requested on the basis of extreme financial hardship. Further, those who request a hearing will be impacted in that the hours for holding the hearing will be limited to those specified in the amendment, namely Monday-Friday, 9 a.m. to 4 p.m. EST.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take in order to comply with this administrative regulation or amendment: Each defaulted student loan borrower who objects to the garnishment of his/her wages on the basis of extreme financial hardship will be required to complete a request for hearing form as well as an affidavit of finances in order to establish his/her claim. If a hearing is requested by a borrower pursuant to this regulation, it shall be held within the prescribed hours.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to the entities noted above as all costs associated with the hearing request process are borne by the Authority.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Those borrowers who complete the hearing request form and affidavit of finances will receive a hearing on the issue of whether garnishment of their wages would constitute an extreme financial hardship.

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

(a) Initially: There are no costs to student loan borrowers associated with the implementation of the amendment to this administrative regulation. Forms for requesting a hearing and for providing financial information to the Authority are provided to the borrowers at no cost to the borrower. The Authority bears any costs associated with the request for hearing process.

(b) On a continuing basis: Same as (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Authority maintains a federally restricted trust fund pursuant to 20 U.S.C. Section 1072b for operation of the insured student loan program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees is necessary for the implementation of the amendment to this administrative regulation. The amendment to this administrative regulation merely adopts the most recent economic standards, as determined by the federal government, for evaluating a student loan borrower's assertion that administrative wage garnishment will create an extreme financial hardship.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering was not applied. It is not applicable to this amendment. This administrative regulation is intended to provide equal opportunity to participate, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Section 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Cite the federal statute or regulation constituting the federal mandate. 20 U.S.C. §1095a, 34 C.F.R. §682.410(b)(10)

2. State in sufficient detail the state compliance standards. This regulation provides for the garnishment of the disposable pay of a borrower who has defaulted in making payments on a loan guaranteed pursuant to Title IV, Part B, of the federal act and establishes the procedures for requesting and conducting a hearing related to the garnishment of the disposable pay.

At least thirty (30) days before the initiation of garnishment proceedings, the Authority shall mail to the borrower's last known address a written notice of the nature and amount of the debt, the intention of the Authority to initiate proceedings to collect the debt through deductions from the borrower's pay, and an explanation of the borrower's rights. In the absence of evidence to the contrary, a borrower shall be considered to have received the notice five (5) days after it was mailed by the Authority. The Authority shall offer the borrower an opportunity to inspect and copy Authority records related to the debt and an opportunity to enter into a written repayment agreement with the Authority under terms agreeable to the Authority.

The Authority shall offer the borrower an opportunity for a hearing concerning the existence or the amount of the debt and the terms of the repayment schedule under the garnishment order. The Authority shall provide a hearing, which, at the borrower's option, may be oral or written, if the borrower submits a written request for such a hearing. The time and location of the hearing shall be established by the Authority. An oral hearing may, at the borrower's option, be conducted either in person or by telephone conference. The Authority shall provide a hearing to the borrower in sufficient time to permit a decision, in accordance with the procedures prescribed in the administrative regulation, to be rendered within sixty (60) days after the Authority's receipt of the borrower's hearing request. The hearing official appointed by the Authority to conduct the hearing may not be under the supervision or control of the head of the Authority. The hearing official shall issue a final written decision.

If the borrower's written request is received by the Authority on or before the 15th day following the borrower's receipt of the notice of the nature and amount of the debt, the intention of the Authority to initiate proceedings, and an explanation of the borrower's rights, the Authority may not issue a withholding order until the borrower has been provided the requested hearing. If the borrower's written request is received by the Authority after the 15th day following the borrower's receipt of the notice, the Authority shall provide a hearing to the borrower in sufficient time that a decision, in accordance with the procedures prescribed in the administrative regulation, may be rendered within sixty (60) days, but shall not delay issuance of a withholding order.

This administrative regulation further provides that if the debtor does not submit required documentation in a timely fashion, then he has not met his burden of substantiating his case. Additionally, if a defense has previously been raised and refuted by the Authority, then the hearing officer must give deference to a prior decision of the Authority. Also, if the debtor is raising for the first time in the administrative wage garnishment hearing a defense that should have been raised at the point of default or some prior action, then the debtor shall be deemed to have not exhausted his appropriate remedies, and the hearing officer may stay the hearing pending consideration of the dispute through the appropriate remedy. Finally, the administrative regulation provides the hearing officer with guidelines to follow which allow him to consistently construe and apply the concept of "extreme financial hardship." In order to prove "extreme financial hardship," a debtor must how, if his income is above one-hundred twenty-five percent (125%) of the poverty level, that his expenses are necessary to the health, safety, or continued employment of the debtor. If the expenses of the debtor exceed the standards derived from data published by the Bureau of Labor Statistics, then the excess expenses are presumed unnecessary and are not considered in the determination unless the debtor can demonstrate that the expenses are necessitated as the result of extraordinary circumstances beyond his control, such as the cost of unreimbursed medical care.

The final decision of the hearing officer may be appealed to and reviewed by the Authority Board on request of either party. An appeal from the hearing officer's decision shall follow the standard that the Board shall uphold the hearing officer's decision unless it is clearly unsupported by the evidence.

The Authority may not garnish the wages of a borrower whom it knows has been involuntarily separated from employment until the borrower has been re-employed continuously for at least 12 months.

Unless the Authority receives information that the Authority believes justifies a delay or cancellation of the withholding order, it shall send a withholding order to the employer within twenty (20) days after the borrower fails to make a timely request for a hearing, or, if a timely request for a hearing is made by the borrower, within twenty (20) days after a final decision is made by the Authority to proceed with garnishment.

The employer shall deduct and pay to the Authority from a borrower's wages an amount that does not exceed the lesser of fifteen (15) percent of the borrower's disposable pay for each pay period or the amount permitted by 15 U.S.C. §1673, unless the borrower provides the Authority with written consent to deduct a greater amount.

3. State in sufficient detail the minimum or uniform standards contained in the federal mandate. The federal statute and regulation require the Authority, as the designated state guarantee Authority, to ensure by adoption of standards, policies and procedures that a borrower has an opportunity for a hearing to dispute the existence, amount or repayment of the debt and that the regulations and procedures for such a hearing meet the requirements of the applicable federal statute (20 U.S.C.S. §1095a) and the applicable federal regulation (34 C.F.R. §682.410(b)(10)).

Specifically, the statute and regulation require that in order to issue an administrative order of wage garnishment under the authority of the federal statute:

At least thirty (30) days before the initiation of garnishment proceedings, the Authority shall mail to the borrower's last known address, a written notice of the nature and amount of the debt, the intention of the Authority to initiate proceedings to collect the debt through deductions from the borrower's pay, and an explanation of the borrower's rights. In the absence of evidence to the contrary, a borrower shall be considered to have received the notice five (5) days after it was mailed by the Authority. The Authority shall offer the borrower an opportunity to inspect and copy Authority records related to the debt and an opportunity to enter into a written repayment agreement with the Authority under terms agreeable to the Authority.

The Authority shall offer the borrower an opportunity for a hearing concerning the existence or the amount of the debt and the terms of the repayment schedule under the garnishment order. The Authority shall provide a hearing, which, at the borrower's option, may be oral or written, if the borrower submits a written request for such a hearing. The time and location of the hearing shall be es-

tablished by the Authority. An oral hearing may, at the borrower's option, be conducted either in person or by telephone conference. The Authority shall provide a hearing to the borrower in sufficient time to permit a decision, in accordance with the procedures that the Authority may prescribe, to be rendered within sixty (60) days after the Authority's receipt of the borrower's hearing request. The hearing official appointed by the Authority to conduct the hearing may not be under the supervision or control of the head of the Authority. The hearing official shall issue a final written decision.

If the borrower's written request is received by the Authority on or before the 15th day following the borrower's receipt of the notice of the nature and amount of the debt, the intention of the Authority to initiate proceedings, and an explanation of the borrower's rights, the Authority may not issue a withholding order until the borrower has been provided the requested hearing. If the borrower's written request is received by the Authority after the 15th day following the borrower's receipt of the notice, the Authority shall provide a hearing to the borrower in sufficient time that a decision, in accordance with the procedures that the Authority may prescribe, may be rendered within sixty (60) days, but shall not delay issuance of a withholding order.

The Authority may not garnish the wages of a borrower whom it knows has been involuntarily separated from employment until the borrower has been re-employed continuously for at least 12 months.

Unless the Authority receives information that the Authority believes justifies a delay or cancellation of the withholding order, it shall send a withholding order to the employer within twenty (20) days after the borrower fails to make a timely request for a hearing, or, if a timely request for a hearing is made by the borrower, within twenty (20) days after a final decision is made by the Authority to proceed with garnishment.

The employer shall deduct and pay to the Authority from a borrower's wages an amount that does not exceed the lesser of fifteen (15) percent of the borrower's disposable pay for each pay period or the amount permitted by 15 U.S.C. §1673, unless the borrower provides the Authority with written consent to deduct a greater amount.

4. In detail, state whether this administrative regulation will impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. If the promulgating administrative body is permitted to select from within a range, state the reasons for the specific selection. Discuss each state requirement that is stricter than the federal mandate in a separate paragraph.

The administrative regulation does not impose stricter requirements than the federal mandate. The federal statute and regulation do not specify specific hearing procedures with the exception that the hearing must be conducted by an independent hearing officer and not an employee of the Authority, the hearing must be conducted and a decision rendered within sixty (60) days after the receipt of the request for a hearing, and that the hearing officer's decision is final (in contrast to KRS Chapter 13B that specifies that the hearing officer renders a "recommended" order subject to finalization by the board). The administrative regulation complies with these requirements. The remaining policies and procedures for requesting and conducting a hearing are left to the discretion of the guaranty agency under the language that the hearing must be conducted "in accordance with the procedures that the agency may prescribe.

The Authority provides the debtor with the opportunity for a hearing to dispute the existence, amount or repayment of the debt. The administrative regulation sets out the procedures for requesting a hearing, the appointment of an impartial hearing officer, the time limits for requesting a hearing and the procedures for conducting a hearing, and the procedures for appealing the decision of the hearing officer to the board.

This administrative regulation further provides that if the debtor does not submit required documentation in a timely fashion, then he has not met his burden of substantiating his case. Additionally, if a defense has previously been raised and refuted by the Authority, then the hearing officer must give deference to a prior decision of the Authority. Also, if the debtor is raising for the first time in the administrative wage garnishment hearing a defense that should have been raised at the point of default or some prior action, then the debtor shall be deemed to have not exhausted his appropriate remedies, and the hearing officer may stay the hearing pending consideration of the dispute through the appropriate remedy. Finally, the administrative regulation provides the hearing officer with guidelines to follow which allow him to consistently construe and apply the concept of "extreme financial hardship." In order to prove "extreme financial hardship," a debtor must show, if his income is above the poverty level, that his expenses are necessary to the health, safety, or continued employment of the debtor. If the expenses of the debtor exceed the standards derived from data published by the Bureau of Labor Statistics, then the excess expenses are presumed unnecessary and are not considered in the determination unless the debtor can demonstrate that the expenses are necessitated as the result of extraordinary circumstances beyond his control, such as the cost of unreimbursed medical care.

The final decision of the hearing officer may be appealed to and reviewed by the Authority board on request of either party. An appeal from the hearing officer's decision shall follow the standard that the Board shall uphold the hearing officer's decision unless it is clearly unsupported by the evidence.

For each state requirement that is stricter than the federal mandate, state the justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

There are no requirements in this administrative regulation that are stricter than the federal mandate.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

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

2. What units, parts or division of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.744(1), KRS 164.748(2), (4), (10), and (20), 164.753(2), 20 U.S.C. §1071 through 1087(2), §1095a, 34 C.F.R. §682.410(b)(9) and (10).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The administrative regulation will result in no additional expenditures by or revenues to the Authority during the first full year of its effectiveness.

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not generate any revenue.

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

How much will it cost to administer this program for subsequent years? No costs are associated with this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(Amendment)

11 KAR 15:090. Kentucky educational excellence scholarship (KEES) program.

RELATES TO: KRS 154A.130(4), 164.7871, 164.7874, 164.7877, 164.7879, 164.7881, 164.7885, 164.7889

STATUTORY AUTHORITY: KRS 164.7874, 164.7877(3), 164.7879(1), (2), (3), 164.7881(4)(a), (c), (6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.7877(3) requires the Authority to administer the Kentucky Educational Excellence Scholarship (KEES) trust fund [~~to administer the funds appropriated to the trust fund for the program~~]. KRS 164.7874(16) requires the Authority to determine the KEES curriculum's courses of study. KRS 164.7879(3)(d) requires the Authority to determine the eligibility of a noncertified, nonpublic high school graduate and of [~~for~~] a GED recipient for a supplemental award. KRS 164.7874(3) requires the Authority to establish a table to convert an SAT score to an ACT standard. KRS 164.7881(6) requires the Authority to establish a five (5) year postsecondary education program standard. KRS 164.7881(4)(a) requires the Authority to establish overall award levels for the program. KRS 164.7879(2)(c) requires the Authority to determine eligibility for children of parents who are in the military and who claim Kentucky as their home of record. KRS 164.7881(4)(c) requires the Authority to identify equivalent undergraduate programs of study. This administrative regulation establishes those requirements relating to the Kentucky Educational Excellence Scholarship (KEES) Program.

Section 1. Definitions. (1) "Academic term" means the fall or spring semester or their equivalence under a trimester or quarter system at a postsecondary education institution and shall not include summer sessions.

(2) "Accredited out-of-state high school" means a high school that is:

(a) Located in a state other than Kentucky or in another country; and

(b) A member of an organization belonging to the Commission on International and Trans-Regional Accreditation.

(3) "ACT" means the test:

(a) Administered to a student for entrance to a Kentucky postsecondary education institution; and

(b) Owned by the ACT Corporation of Iowa City, Iowa.

(4) "Advanced placement" is defined by KRS 158.007(1).

(5) "Course" means, for purposes of the KEES curriculum, the equivalent of one (1) credit as determined by KDE in 704 KAR 3:305.

(6) [~~(5)~~] "Cumulative grade point average" means the total grade point average for a postsecondary education student as reported by the postsecondary education institution where the [~~a~~] student is currently enrolled.

(7) [~~(6)~~] "Department of Defense school" means a school operated by the U. S. Department of Defense for the purpose of providing a high school education to a child whose custodial parent or guardian is in active military or diplomatic service in a state other than Kentucky or in another country.

(8) [~~(7)~~] "Enrolled" means the status of a student who has completed the registration requirements, except for the payment of tuition and fees, at a participating postsecondary education institution that the [~~a~~] student is attending.

(9) [~~(8)~~] "Free and Reduced Price Lunch" means the National School Lunch program established by the United States Department of Agriculture to provide subsidized meals to lower income students.

(10) [~~(9)~~] "GED" means a general educational development diploma awarded to a student.

(11) [~~(10)~~] "International baccalaureate course" is defined by KRS 158.007(10).

(12) [~~(11)~~] "KDE" means the Kentucky Department of Education authorized and established pursuant to KRS 156.010.

(13) [~~(12)~~] "SAT" means the test:

(a) Administered to a student for entrance to a Kentucky postsecondary education institution; and

(b) Owned by the College Board.

Section 2. High School Grade Point Average Calculation and Reporting. (1) An eligible high school student's grade point average for an academic year shall be calculated using each grade awarded for all courses taken during an academic year.

(2)(a) Except as provided in paragraph (b) of this subsection, an eligible high school student's grade point average shall be calculated by:

1. Taking the number of units in a course multiplied by the course grade as expressed on a 4.0 point grading scale where 4.0 is an "A" and 0.0 is an "F";

2. Adding the total number of points accumulated for an academic year; and

3. Dividing the total number of points accumulated in subparagraph 2 of this paragraph by the total number of units for the academic year.

(b) For an eligible high school student taking an advanced placement or international baccalaureate course during the academic year, the grade assigned shall be calculated using a 5.0 point scale where 5.0 is an "A" and 1.0 is an "F".

(3) The grade point average reported for an eligible high school student for each academic year shall include all information as set forth in KRS 164.7885(1) and be submitted to the authority in either an electronic or hard copy format.

(4) A high school student who participated in an educational high school foreign exchange program or the Congressional Page School that was approved by the student's local high school shall have the student's grade point average reported in accordance with KRS 164.7879(2)(b).

Section 3. High School Students of Custodial Parents or Guardians in Active Military Service. (1)(a) For purpose of determining eligibility under the provisions of KRS 164.7879(2)(c), a high school student shall establish that the custodial parent or guardian meets the requirements of KRS 164.7879(2)(c)1a and b and shall submit the "Home of Record Certification" to the Authority.

(b) The Authority annually shall notify the eligible high school student and the custodial parent or guardian of the student's eligibility.

(2)(a) A high school student, determined to be eligible for the KEES program under the terms of KRS 164.7879(2)(c) and subsection (1)(a) of this section, shall be responsible for:

1. Requesting grade and curriculum information from the local school; and

2. Requesting that the local school submit the information to the Authority using the "Curriculum Certification" Form and the "Data Submission" Form.

(b) [~~The Authority, upon~~] Upon receipt of curriculum and grade information from an accredited out-of-state high school or Department of Defense school for a student determined to be eligible for the KEES Program under this section, the authority shall:

1. Verify that the submitted curriculum meets the requirements of Section 4 of this administrative regulation;

2. Verify that the out-of-state high school or Department of Defense school is an accredited out-of-state high school; and

3. Retain the "Curriculum Certification" on file until the student's eligibility has expired.

Section 4. Postsecondary Student Eligibility and KEES Curriculum. (1) A Kentucky postsecondary student shall be eligible to receive a base scholarship award if the student:

(a) Has earned a base scholarship award in high school;

(b) Has completed the KEES curriculum as set forth in subsection (2) of this section;

(c) Has graduated from a Kentucky high school except as provided in Section 2(4) or 3 of this administrative regulation; and

(d) Is enrolled in a participating institution in an eligible program.

(2) Except as provided in subsection (4) of this section, the KEES curriculum shall consist of the courses and electives required by this subsection.

(a) For a student enrolled in high school who is required to meet the curriculum standards in 704 KAR 3:305, [~~Section 2,~~] five (5) of the seven (7) electives required by 704 KAR 3:305, [~~Section 2~~] shall be taken in the areas and according to the standards established in paragraph (b) of this subsection.

(b) The following subject areas and standards shall be applicable for electives. [~~An elective in:~~]

1. A social [~~Social~~] studies, science, mathematics, English/language arts, [~~or~~] arts and humanities, physical education, or health elective shall be a course whose academic content is as rigorous as the content established for courses in this area in 703 KAR 4:060. [~~2. Physical education or health shall be a course whose academic content is as rigorous as the content established for courses in this area in 703 KAR 4:060, and shall be limited to one-half (1/2) academic unit of credit for each area.~~]

2. [~~3.~~] A foreign language elective [~~Foreign languages~~] shall be a course whose academic content includes teaching the spoken and written aspects of the language.

3. [~~4.~~] An agriculture [~~Agriculture~~], industrial technology education, business education, marketing education, family and consumer sciences, health sciences, technology education or career pathways elective shall be a course whose academic content is beyond the introductory level in the vocational education areas of study as established by 703 KAR 4:060.

(3) A student who graduates from high school at the end of the fall semester of his or her senior year and who meets the requirements of KRS 164.7874(7) shall be eligible to earn a KEES award for that year upon:

(a) Completion of no fewer than three (3) courses of study; and

(b) Satisfying the provisions of KRS 164.7879.

(4) A high school may substitute an integrated, applied, interdisciplinary or higher level course for a required course or required elective if:

(a) The course provides the same or greater academic rigor and the course covers [~~the minimum required content areas~~] or exceeds the minimum required content areas established in 703 KAR 4:060[~~, and the document "Academic Expectations"~~]; or

(b) The course is an honors course, cooperative education course, advanced placement course, international baccalaureate course, dual credit course, or a course taken at a postsecondary education institution.

(5) As referenced in 4(b), beginning with the 2012-2013 academic year, only one cooperative education course per academic year shall count for purposes of satisfying KEES curriculum requirements.

(6) [~~(5)~~] A high school annually shall provide written documentation to a student on whether the student's schedule of coursework meets the requirements of the KEES curriculum.

Section 5. Eligible Postsecondary Education Programs. (1) An eligible program shall be a certificate or degree program offered by a participating institution and recognized by the Authority.

(2) An eligible program at an out-of-state participating institution shall be limited to those programs that qualify through the Academic Common Market administered by the Southern Regional Education Board except as provided in subsection (4) of this section.

(3) Pursuant to KRS 164.7881(6), the following academic programs at Kentucky postsecondary education institutions shall be approved as five (5) year baccalaureate degree programs:

(a) Landscape architecture (04.0601); and

(b) For students that graduated from high school not later than the 2004-2005 academic year, engineering provided, however, that enrollment in the engineering program shall be continuous (14.0101, 14201, 14.0301, 14401, 14501, 14.0701, 14.0801, 14.0901, 14.1001, 14.1201, 14.1301, 14.1401, 14.1701, 14.1801, 14.1901, 14.2101, 14.2301, 14.2401, 14.2801, 14.9999.01, 14.3501).

(4) Pursuant to KRS 164.7881(4)(c)1, an academic program shall be designated as an equivalent undergraduate program of study if the student in the program of study:

(a) Has not received eight (8) semesters of a KEES award;

(b) Is classified by an institution as a graduate or professional student and is enrolled in one (1) of the following academic programs:

1. Pharm. D;

2. The optometry or veterinary medicine programs at an institution which is a part of the Kentucky Contract Spaces Program; or

3. A program contained on the Equivalent Undergraduate Programs List; and

(c) Has not completed a baccalaureate degree.

Section 6. SAT Conversion Table. Pursuant to KRS 164.7874(3), the following SAT to ACT Conversion Table shall be used:

Table C-2
Concordance Between SAT I Recentered V+M Score and ACT Composite Score

SAT I V+M	ACT Composite	SAT I V+M	ACT Composite	SAT I V+M	ACT Composite	SAT I V+M	ACT Composite	SAT I V+M	ACT Composite
1600	35-36	1370	31	1140	25	910	19	680	14
1590	35	1360	31	1130	25	900	19	670	14
1580	35	1350	30	1120	24	890	18	660	14
1570	35	1340	30	1110	24	880	18	650	13
1560	35	1330	30	1100	24	870	18	640	13
1550	34	1320	30	1090	24	860	18	630	13
1540	34	1310	29	1080	23	850	17	620	13
1530	34	1300	29	1070	23	840	17	610	13
1520	34	1290	29	1060	23	830	17	600	13
1510	34	1280	29	1050	22	820	17	590	13
1500	33	1270	28	1040	22	810	17	580	12
1490	33	1260	28	1030	22	800	16	570	12
1480	33	1250	28	1020	22	790	16	560	12
1470	33	1240	28	1010	21	780	16	550	12
1460	33	1230	27	1000	21	770	16	540	12
1450	32	1220	27	990	21	760	16	530	12
1440	32	1210	27	980	21	750	15	520	12
1430	32	1200	26	970	20	740	15	510	11
1420	32	1190	26	960	20	730	15	500	11
1410	32	1180	26	950	20	720	15		
1400	31	1170	26	940	20	710	15		
1390	31	1160	25	930	19	700	14		
1380	31	1150	25	920	19	690	14		

This table can be used to relate SAT I V+M scores to ACT Composite scores.
The estimates are based on the test scores of 103,525 students from fourteen (14) universities and two (2) states who took both the ACT and the SAT I between October 1994 and December 1996. Because the ACT and the SAT I have different content, students' actual scores on the ACT could differ significantly from the concordance estimates in the table.
Source: ACT, Inc. Questions about the concordance study may be directed to ACT's Research Division (319/337-1471).
January 1998

Section 7. Criteria for Supplemental Award to Noncertified, Nonpublic High School Students and to GED Students. (1) A Kentucky resident who is a citizen, national or permanent resident of the United States and who graduates from a nonpublic Kentucky high school not certified by the Kentucky Board of Education shall be eligible for a supplemental award if:

(a) The student is not a convicted felon;

(b) The date of the student's graduation is May 1999 or thereafter;

(c) The student takes the ACT or SAT and has at least a minimum score as established by KRS 164.7879(3); and

(d) The student enrolls in a participating institution within five (5) years after graduation from high school.

(2) A Kentucky resident who is a citizen, national or permanent resident of the United States and who has not graduated from either a certified Kentucky high school or a nonpublic Kentucky high school that is not certified by the Kentucky Board of Education shall be eligible for a supplemental award if:

(a) The student is not a convicted felon;

(b) The student's 18th birthday occurs on or after January 1, 1999;

(c) The student takes and receives a GED diploma in Kentucky within five (5) years of attaining eighteen (18) years of age;

(d) The student takes the ACT or SAT and achieves a minimum score for eligibility as established by KRS 164.7879(3); and

(e) The student enrolls in a participating institution after July 1, 1999, and within five (5) years of receiving the GED diploma.

(3) A student who graduates from or attends an accredited out-of-state high school or Department of Defense school shall qualify for a supplemental award if:

(a) The parents meet the provisions of KRS 164.7879(2)(c)1a and b;

(b) The student takes the ACT or SAT and achieves a minimum score for eligibility as established by KRS 164.7879(3); and

(c) The student enrolls in a participating institution within five (5) years of graduating from or attending the accredited out-of-state high school or Department of Defense school.

(4) A student requesting a supplemental award under this section shall notify the participating institution where the student has or intends to enroll.

(5)(a) Residency shall be determined by a participating institution in accordance with 13 KAR 2:045.

(b) A participating institution shall determine a student's eligibility for a supplemental award under this section and shall notify the Authority of the student's eligibility.

Section 8. Supplemental Award. An eligible high school student who receives a supplemental award as a result of taking and receiving a GED within five (5) years of obtaining eighteen (18) years of age shall have a maximum of five (5) years eligibility beyond the date the GED is received.

Section 9. Section 9. Supplemental Award for Achievement on Examinations. (1) Pursuant to KRS 164.7879(3)(c), a supplemental award shall be provided for achievement on Advanced Placement (AP) or International Baccalaureate (IB) examinations as defined in KRS 158.007 to an eligible high school student whose family was eligible for free and reduced price lunch during any year of high school.

(2)(a) An eligible high school shall report the status of each student as eligible or ineligible for free and reduced price lunch to the Authority on an annual basis.

(b) In determining a high school student's free and reduced price lunch eligibility, the high school shall utilize the income eligibility guidelines published each year by the United State Department of Agriculture, Food and Nutrition Service.

Section 10. Administrative Responsibilities and Expenses of Program. (1) The Authority annually shall determine the level of funding for expenses associated with the program and shall allocate funds from the "Wallace G. Wilkinson Kentucky Educational Excellence Scholarship Trust Fund" described in KRS 164.7877(1) and (3).

(2) The Authority annually shall adopt a budget proposal indicating the amount of funds available and a detailed listing of the expenditures necessary to operate the program.

(3) The Authority shall develop an allotment schedule for the release of the administrative funds.

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

(a) "Home of Record Certification, June 2005;"

(b) "Curriculum Certification, June 2005;"

(c) "Data Submission, June 2005;" and

(d) "Equivalent Undergraduate Programs List[-]", June 2005.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Authority, 100 Airport Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

KRISTI P. NELSON, Chair

APPROVED BY AGENCY: May 10, 2011

FILED WITH LRC: June 14, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, July 25, 2011 at 10:00 a.m. Eastern Time at 100 Airport Road, 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 canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Monday, August 1, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jo Carole Ellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets out the procedures for administering the Kentucky Educational Excellence Scholarship (KEES) Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements relating to the Kentucky Educational Excellence Scholarship (KEES) Program for the Kentucky Higher Education Assistance Authority (KHEAA).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.7877(3) requires KHEAA to administer the funds appropriated to the trust fund for the program; KRS 164.7874(14) requires KHEAA to determine the KEES curriculum's courses of study; KRS 164.7879(3)(c) requires KHEAA to determine the eligibility of a noncertified, nonpublic high school graduate and for a GED recipient for a supplemental award; KRS 164.7874(3) requires KHEAA to establish a table to convert an

SAT score to an ACT standard; KRS 164.7881(6) requires KHEAA to establish a five (5) year postsecondary education program standard; KRS 164.7881(4)(a) requires KHEAA to establish overall award levels for the program; KRS 164.7879(2)(c) requires KHEAA to determine eligibility for children of parents who are in the military and who claim Kentucky as their home of record; and KRS 164.7535 and 164.7881 (4)(c) require KHEAA to identify equivalent undergraduate programs of study. This Administrative regulation established these requirements related to the KEES program.

(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 program eligibility criteria for administration of the KEES program by KHEAA.

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

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

This amendment will change the existing regulation by adding "course" as a defined term, removing the reference to the "academic expectations" document which is no longer utilized by the Kentucky Department of Education in evaluating curricula, and clarifying that only one cooperative education course per academic year shall count for KEES purposes beginning in academic year 2012-2013. Further, this amendment will change the existing administrative regulation by clarifying that, for the 5-year undergraduate engineering program at the University of Kentucky, a recipient must be continuously enrolled in said program in order to be eligible for a fifth year KEES award.

(b) The necessity of the amendment to this administrative regulation: This amendment to the administrative regulation is necessary in order to further refine the provisions related to the high school KEES curriculum and to further specify the conditions under which a scholarship recipient is eligible for a fifth year KEES award.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes require KHEAA to develop regulations for administration of the KEES program. This amendment enhances the provisions pertaining to high school curricula under the KEES program further enhances the regulation pertaining to eligibility for a fifth year KEES award.

(d) How the amendment will assist in the effective administration of the statutes: This amendment to the administrative regulation will assist in the effective administration of the statutes by further describing the elective courses applicable to the KEES curriculum and clarifying how cooperative education courses shall be counted for purposes of satisfying the KESS curriculum requirements. It will also assist in the effective administration of the statutes by further defining the program eligibility criteria for the KEES program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All potential KEES recipients beginning with academic year 2012-2013 who might enroll in cooperative education courses could be impacted by this amendment. Further, approximately 800 postsecondary students who currently receive KEES awards who may pursue an engineering program of study, and any unknown number of future postsecondary students that may choose to pursue an engineering program of study at the University of Kentucky could potentially be affected by this amendment.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment:

(a) List the actions that each of the regulated entities identified in question (3) will have to take in order to comply with this administrative regulation or amendment: Beginning in 2012-2013, potential KEES recipients who enroll in cooperative education courses will be limited in that only one such course each academic year will be counted as satisfying KEES curriculum requirements. Additionally, in order to be eligible for a fifth year KEES award under this program, recipients pursuing a 5-year undergraduate program in engineering at the University of Kentucky must maintain continuous enrollment in that program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to program recipients in complying with this amendment to the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Those high school students who enroll in cooperative education courses during academic year 2012-2013 or thereafter will have only one cooperative course per academic year counted for KEES purposes. Further, continuous enrollment in the specified program of study will entitle otherwise eligible KEES recipients to receive a fifth year KEES award.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The KEES program is funded through net lottery revenues transferred in accordance with KRS 154A.130.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor increase any existing fees.

(9) TIERING: Is tiering applied? Tiering was not applied. It is not applicable to this amendment. This administrative regulation is intended to provide equal opportunity to participate, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.7874; 164.7877(3); 164.7879(1), (2), (3); 164.7881(4)(a), (c), (6).

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

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

b. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not generate any revenue.

c. How much will it cost to administer this program for the first year? No costs are associated with this regulation.

d. How much will it cost to administer this program for subsequent years? No costs are associated with this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

EDUCATION PROFESSIONAL STANDARDS BOARD
(Amendment)

16 KAR 2:010. Kentucky teaching certificates.

RELATES TO: KRS 158.6451, 161.020, 161.028(1), 161.030
STATUTORY AUTHORITY: KRS 161.028(1)(a), (b), (f), 161.030
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1)(a) requires the Education Professional Standards Board to establish the standards for obtaining and maintaining a teaching certificate. KRS 161.028(1)(b) requires the board to set standards for programs for the preparation of teachers and other professional school personnel. KRS 161.028(1)(f) requires the board to issue and renew any certificate. This administrative regulation establishes the Kentucky certification to be issued for teaching positions.

Section 1. Definitions. (1) "Approved program of preparation" means a program which has been approved by the Education Professional Standards Board under 16 KAR 5:010 for a specific certification or which has been approved for certification by the state education agency of another state.
(2) "Assessments" means the tests of knowledge and skills authorized by KRS 161.030 and established in 16 KAR 6:010.
(3) "Base certificate" means a stand-alone license to teach which encompasses authorization to teach introductory and interdisciplinary courses in related fields.
(4) "Beginning teacher internship" means one (1) year of supervision, assistance, and assessment required by KRS 161.030 and established in 16 KAR 7:010.
(5) "Certificate endorsement" means an addition to a base or restricted base certificate, which is limited in scope and awarded on the basis of completion of an endorsement program or a combination of educational requirements, assessments and experience as outlined in Section 5 of this administrative regulation.
(6) "Certificate extension" means an additional base or restricted base certificate in a content area or grade range.
(7) "Kentucky teacher standards" means the standards established in 16 KAR 1:010 that identify what a Kentucky teacher shall know and be able to do.
(8) "Major" means an academic area of concentration consisting of at least thirty (30) hours of coursework.
(9) "Professional teaching certificate" means the document issued to:
(a) An individual upon successful completion of the beginning teacher internship; or
(b) An applicant for whom the testing and internship requirement is waived under KRS 161.030 based on preparation and experience completed outside Kentucky.
(10) "Provisional teaching certificate" means the document issued to an individual for the duration of the beginning teacher internship program.
(11) "Restricted base certificate" means a stand-alone license to teach in a specific subject area of certification which is the only subject area that can be taught under this limited certificate.
(12) "Statement of eligibility" means the document issued to an applicant upon completion of an approved program of preparation and successful completion of the assessments.

Section 2. Certificate Issuance. (1) A statement of eligibility for a provisional teaching certificate shall be issued to an applicant who has submitted a completed TC-1 application form and has successfully completed:
(a)1. At least a bachelor's degree with:
a. A cumulative grade point average of 2.50 on a 4.0 scale; or
b. A grade point average of 3.00 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework; or
2. As required by Section 4(2)(g)6 or (4)(e) of this administrative regulation, a master's degree with:
a. A cumulative grade point average of 2.50 on a 4.0 scale; or
b. A grade point average of 3.00 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework;
(b) An approved program of preparation; and
(c) The assessments corresponding to the certificate identified in Section 4 of this administrative regulation for which application is being made.
(2) Upon confirmation of employment in an assignment for the grade level and specialization identified on a valid statement of eligibility, a Provisional Teaching Certificate shall be issued for the duration of the beginning teacher internship established under KRS 161.030.
(3) Upon successful completion of the internship, a Professional Teaching Certificate shall be issued, valid for a four (4) year period.

Section 3. Professional Teaching Certificate Renewal. (1) The renewal shall require completion of a fifth-year program of preparation which is consistent with:
(a) The Kentucky teacher standards established in 16 KAR 1:010; or
(b) The standards adopted by the Education Professional Standards Board for a particular professional education specialty and established in an applicable administrative regulation in KAR Title 16.
(2) The first five (5) year renewal shall require:
(a) Completion of a minimum of fifteen (15) semester hours of graduate credit applicable to the fifth-year program established in 16 KAR 8:020 by September 1 of the year of expiration of the certificate; or
(b) Completion of the required components of the continuing education option for initial certificate renewal as established in 16 KAR 8:030.
(3) The second five (5) year renewal shall require:
(a) Completion of the fifth-year program established in 16 KAR 8:020 by September 1 of the year of expiration of the certificate; or
(b) Successful completion of the continuing education option as established in 16 KAR 8:030.
(4) Each subsequent five (5) year renewal shall require completion of the renewal requirements established in 16 KAR 4:060.

Section 4. Grade Levels and Specializations. (1) Preparation for a teaching certificate shall be based on:
(a) The Kentucky teacher standards established in 16 KAR 1:010;
(b) The accreditation and program approval standards established in 16 KAR 5:010, including the content standards of the relevant national specialty program associations; and
(c) The goals for the schools of the Commonwealth specified in KRS 158.6451 and the student academic expectations established in 703 KAR 4:060.
(2) A base certificate shall be issued specifying one (1) or more of the following grade level and specialization authorizations:
(a) Interdisciplinary early childhood education, birth to primary, established in 16 KAR 2:040;
(b) Elementary school: primary through grade 5 to include preparation in the academic disciplines taught in the elementary school.
1. The elementary certificate shall be valid for teaching grade 6 if grade 6 is taught in a self-contained classroom or in a school organization in which grade 6 is housed with grade 5 in the same building.
2. A candidate for the elementary certificate may simultaneously prepare for certification for teaching exceptional children.
(c)1. Middle school option 1: grades 5 through 9 with the equivalent of one (1) major to be selected from:
a. English and communications;
b. Mathematics;
c. Science; or
d. Social studies;
2. Middle school option 2: grades 5 through 9 with two (2) middle school teaching fields to be selected from:
a. English and communications;
b. Mathematics;
c. Science; or
d. Social studies;

3. The grades 5 through 9 mathematics certificate shall be valid for teaching Algebra I grades 10 and 11.

4. A candidate who chooses to simultaneously prepare for teaching in the middle school and for an additional base or restricted base certificate issued under this subsection or subsection (3) of this section, including certification for teaching exceptional children, shall be required to complete one (1) middle school teaching field;

(d) Secondary school: grades 8 through 12 with one (1) or more of the following majors:

1. English;
2. Mathematics;
3. Social studies;
4. Biology;
5. Chemistry;
6. Physics; or
7. Earth science;

(e) Grades 5 through 12 with one (1) or more of the following majors:

1. Agriculture;
2. Business and marketing education;
3. Family and consumer science;
4. Industrial education; or
5. Engineering and technology;

(f) All grade levels with one (1) or more of the following specialties:

1. Art;
2. A foreign language;
3. Health;
4. Physical education;
5. Integrated music;
6. Vocal music;
7. Instrumental music; or
8. School media librarian; or

(g) Grades primary through 12 for teaching exceptional children and for collaborating with teachers to design and deliver programs for preprimary children, for one (1) or more of the following disabilities:

1. Learning and behavior disorders;
2. Moderate and severe disabilities;
3. Hearing impaired;
4. Hearing impaired with sign proficiency;
5. Visually impaired;
6. Communication disorders, valid at all grade levels for the instruction of exceptional children and youth with communication disorders, which shall require a master's degree in communication or speech language pathology, in accordance with 16 KAR 2:050, Section 2; or
7. Communication disorders - SLPA only, valid at all grade levels for the instruction of exceptional children and youth with communication disorders, which shall require a baccalaureate degree in communication or speech language pathology, in accordance with 16 KAR 2:050, Section 3.

(3) A restricted base certificate shall be issued specifying one (1) or more of the following grade level and specialization authorizations:

(a) Psychology, grades 8-12;
(b) Sociology, grades 8 through 12;
(c) Journalism, grades 8 through 12;
(d) Speech/media communications, grades 8-12;
(e) Theater, primary through grade 12;
(f) Dance, primary through grade 12;
(g) Computer information systems, primary through grade 12; or
(h) English as a second language, primary through grade 12.

(4) An endorsement to certificates identified in subsection (2) or (3) of this section shall be issued specifying one (1) or more of the following grade level and specialization authorizations:

(a) Computer science, grades 8-12;
(b) English as second language, primary through grade 12;
(c) Gifted education, primary through grade 12;
(d) Driver education, grades 8-12;
(e) Literacy specialist, primary through grade 12[~~, which shall require a master's degree in reading or literacy~~];
(f) Reading, primary through grade 12;
(g) Instructional computer technology, primary through grade twelve (12);
(h) Teacher Leader, all grades;
(i) Other instructional services - school safety, primary through grade 12;
(j) Other instructional services - environmental education, primary through grade 12;
(k) Other instructional services - elementary mathematics specialist, primary through grade 5;
(l) Learning and behavior disorders, grades 8 through 12.

1. This endorsement shall be issued following completion of the requirements of Section 5(2) of this administrative regulation; and

2. This endorsement shall only be issued to candidates with preparation and certification for a base or restricted base certificate for the secondary grades 8-12; or

(m) American Sign Language, primary through grade 12.

Section 5. Additional Certification. (1) A certificate extension may be issued for any base or restricted base certificate area offered in Section 4(2) or (3) of this administrative regulation and shall require:

(a) A valid base or restricted base certificate, including a statement of eligibility;
(b) Successful completion of the applicable assessments; and
(c) Recommendation from an approved preparation program upon demonstration of competency in the relevant teaching methodology verified via coursework, field experience, portfolio, or other proficiency evaluation.

(2) A certificate endorsement may be issued for any area listed in Section 4(4) of this administrative regulation and shall require:

(a) A valid base or restricted base certificate, including a statement of eligibility;
(b) Successful completion of the applicable assessments; and
(c) Recommendation from an approved preparation program.

(3)(a) A professionally-certified teacher may add a certificate endorsement or extension if the teacher meets the requirements established in paragraph (b) of this subsection.

(b) A certificate extension or certificate endorsement shall be issued if an educator submits a completed TC-HQ application and:

1. Holds a valid Kentucky professional teaching certificate;
2.a. Current employment in a certified position;
b. Has a bona fide offer of employment in a certified position in a Kentucky public school; or
c. Approval of the local district superintendent;
3. Successfully completed the applicable content assessments; and
4. Has either:
a. A declared major in the area of certification being sought; or
b. A combination of education, experience, professional development, awards and achievements in the area of certification being sought sufficient to demonstrate subject matter competency as evidenced by a score of ninety (90) points on the index contained within the application form, TC-HQ.
i. Points shall be granted only for experience, professional development, awards or achievements earned relative to the specific content area, student population taught, and grade range served.
ii. Coursework shall be validated on the application by a Kentucky college or university approved by the EPSB to serve as a "clearinghouse" for the purposes of this option.
iii. Successful completion of the appropriate content assessment or assessments for the certificate area being added shall count for forty-five (45) points.

(4) If a teacher currently holds a professional certificate in the secondary grades 8-12, and applies for a certificate extension or endorsement in the same content area for middle school grades 5-9, the teacher shall not be required to complete the content assessment.

(5) A certificate extension or endorsement issued under the requirements established in subsection (3)(b) of this section shall be permitted in the areas of English, mathematics, sciences, foreign languages, or social studies. Health and physical education

areas shall be added only if the teacher holds the correlative certificate.

Section 6. A candidate pursuing certification via an alternative route to certification shall receive the same certificates delineated in Section 4 of this administrative regulation following completion of the appropriate requirements specific to each alternative route.

Section 7. Application for certification or additional certification shall be made on Form TC-1 and shall be accompanied by the fees required by 16 KAR 4:040.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form TC-1, rev. 10/05[~~4/2004~~], Education Professional Standards Board; and

(b) Form TC-HQ, edition 10/2009, Education Professional Standards Board.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LORRAINE WILLIAMS, Chairperson

APPROVED BY AGENCY: May 16, 2011

FILED WITH LRC: June 1, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 29, 2011 at 9:00 a.m. at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 1, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alicia A. Sneed, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Kentucky certification to be issued for teaching positions.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide notice to certification candidates of the requirements for obtaining and maintaining a teaching certificate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.028(1)(a) requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.028(1)(b) requires the board to set standards for programs for the preparation of teachers and other professional school personnel. KRS 161.028(1)(f) requires the board to issue and renew any certificate.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation lists the requirements for obtaining and maintaining a teaching certificate 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: This amendment removes the master's degree requirement for the literacy specialist endorsement and incorporates the TC-1 form revised in October, 2005 by reference.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure that the educational requirements for certificate endorsements are consistent, and to insure that the most recent application forms are used.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statues, KRS 161.020, 161.028, and 161.030, govern the certification of professional school personnel and grant the Education Professional Standards Board certification authority and the responsibility for establishing the requirements for obtaining and maintaining a certificate. This amendment establishes the requirements for obtaining and maintaining a teaching certificate.

(d) How the amendment will assist in the effective administration of the statutes: This amendment removes the master's degree requirement for the literacy specialist endorsement, bringing it in line with the other endorsements listed in the regulation. The amendment also ensures that the TC-1 form used by applicants is the most current one available.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 174 Kentucky school districts, 30 educator preparation programs, and candidates for teacher certification.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The school districts will not be required to take any additional action. The educator preparation programs will not need to take any additional action. Applicants will need to continue to refer to this regulation or the Education Professional Standards board website for current certification requirements.

(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 any of the entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The school districts will have a larger pool of qualified applicants from which to choose for literacy specialist positions.

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

(a) Initially: None

(b) On a continuing basis: None

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

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

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

(9) TIERING: Is tiering applied? No, tiering does not apply since all candidates for certification will be held to the same standard.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

Board.

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

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This is not a fee generating or a revenue costing regulation, but merely establishes the certification requirements for teacher candidates to obtain certification.

EDUCATION PROFESSIONAL STANDARDS BOARD
(Amendment)

16 KAR 4:060. Certificate renewals and successful teaching experience.

RELATES TO: KRS 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020, 161.028, and 161.030 require that a teacher and other professional school personnel hold a certificate of legal qualification for his or her respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board. KRS 161.020 provides that the validity and terms for the renewal of a certificate shall be determined by the laws and administrative regulations in effect at the time the certificate was issued. This administrative regulation establishes certificate renewal provisions and the requirements for successful teaching experience for certificate issuance and renewal.

Section 1. Certificate Renewals. (1) If the renewal of a teaching certificate requires the completion of additional academic course work in lieu of teaching experience, the credits shall be selected from the Planned Fifth-Year Program.

(2) Except as provided in KRS 161.030(3), a teaching certificate shall be issued for a duration period of five (5) years, with provision for subsequent five (5) year renewals.

(3)(a) A certificate shall be renewed for subsequent five (5) year periods upon the completion of:

1. Three (3) years of successful teaching experience as established in Section 2 of this administrative regulation; or

2. At least six (6) semester hours of credit or the equivalent in professional development defined in 16 KAR 8:020.

(b) The requirements of this subsection shall apply to teachers who have completed the Fifth Year Program renewal requirements established in 16 KAR 8:020 and 16 KAR 2:010, Section 3.

(4) The renewal requirements shall be completed by September 1 of the year of expiration of the certificate.

(5)(a) Upon expiration, a regular certificate shall be extended for one (1) time for the one (1) year period immediately following the expiration date upon completion of at least one-third (1/3) of the renewal requirements and upon recommendation by the employing school superintendent. The remainder of the renewal requirements shall be completed within the one (1) year period of reinstatement.

(b) Application for the extension shall be made on Form TC-2.

(6)(a) Experience in the armed forces of the United States of America shall be accepted toward the renewal of a teaching certificate in lieu of required teaching experience as established in Section 2 of this administrative regulation, if the applicant held a valid certificate prior to entering military service.

(b) The validity period of a certificate held by a person at the time of entry into the armed forces of the United States of America shall be extended for the same period of time for which it was valid at the time of entry, beginning from the date of discharge.

(7) For a certificate requiring teaching experience for renewal, experience as a substitute teacher shall be accepted in lieu of required teaching experience as established in Section 2 of this administrative regulation if the holder of the certificate:

(a) Was employed officially by the local board of education;

(b) Was paid through the board of education; and

(c) Substituted in his certification area no less than thirty (30) teaching days per semester.

(8) Work experience at the Education Professional Standards Board, Kentucky Department of Education, or other state or federal educational agency with oversight for elementary and secondary education shall be accepted toward the renewal of a teaching certificate in lieu of teaching experience as established in Section 2 of this administrative regulation.

(9) Teaching experience at a regionally- or nationally-accredited institution of higher education in the academic subject area for which the teacher holds certification shall be accepted toward the renewal of a teaching certificate in lieu of teaching experience as established in Section 2 of this administrative regulation.

(10) Application for certification renewal shall be made on Form TC-2.

Section 2. Successful Teaching Experience for Certificate Issuance and Renewal. (1) Successful teaching experience shall be in a position directly corresponding to the type of teaching certificate for which the application is being made.

(2) A full year of experience shall include at least 140 teaching days of employment performed within the academic year.

(3) A half year of experience shall include at least seventy (70) teaching days of employment performed within an academic semester.

(4) The experience shall include employment on at least a half-time basis as defined in 16 KAR 7:010.

(5) The experience may include employment in either a public school or a regionally- or nationally-accredited nonpublic school.

(6) Experience as a home school teacher shall not be accepted as successful teaching experience.

(7) The superintendent of the employing district or chief school officer of the employing nonpublic school shall verify successful teaching experience on the certification application, Form TC-1 incorporated by reference in 16 KAR 2:010Ufor initial certification or Form TC-2 for certificate renewal.

Section 3. Incorporation by Reference. (1) Form TC-2, rev.10/03, is hereby incorporated by reference.[~~The following material is incorporated by reference:~~

~~(a) Form TC-1, rev. 9/2000, Education Professional Standards Board; and~~

~~(b) Form TC-2, rev. 9/2000, Education Professional Standards Board~~.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m.

LORRAINE WILLIAMS, Chairperson

APPROVED BY AGENCY: May 16, 2011

FILED WITH LRC: June 1, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on

July 29, 2011 at 9:00 a.m. at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 1, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alicia A. Sneed, Director of Legal Services

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes certificate renewal provisions and the requirements for successful teaching experience for certificate issuance and renewal.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide notice to certification candidates of the requirements for obtaining and maintaining a teaching certificate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020, 161.028, and 161.030 require that a teacher and other professional school personnel hold a certificate of legal qualification for his or her respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board. KRS 161.120 provides that the validity and terms for the renewal of a certificate shall be determined by the laws and administrative regulations in effect at the time certificate was issued.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation lists the requirements for renewing a certificate 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: This amendment incorporates the TC-2 form revised in October, 2003 by reference.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure that the most recent application forms are used.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statues, KRS 161.020, 161.028, and 161.030, govern the certification of professional school personnel and grant the Education Professional Standards Board certification authority and the responsibility for establishing the requirements for obtaining and maintaining a certificate. This amendment establishes certificate renewal provisions and the requirements for successful teaching experience for certificate issuance and renewal.

(d) How the amendment will assist in the effective administration of the statutes: This amendment ensures that the certification application is the most current one available.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 174 Kentucky school districts, 30 educator preparation programs, and candidates for teacher certification.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The school districts will not be required to take any additional action. The educator preparation programs will not need to take any additional action. Applicants will need to continue to refer to this regulation or the Education Professional Standards board website for current certification requirements.

(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 any of the entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All entities will be using the most recent certification forms, ensuring consistency in the application process.

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

(a) Initially: None

(b) On a continuing basis: None

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

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

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

(9) TIERING: Is tiering applied? No, tiering does not apply since all candidates for certification will be held to the same standard.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School districts, regional universities, and the Education Professional Standards Board.

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

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This is not a fee generating or a revenue costing regulation, but merely establishes the certification requirements for teacher candidates to obtain certification.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Property Valuation
(Amendment)

103 KAR 8:010. [~~Nonresident~~] Watercraft Allocation

RELATES TO: KRS 136.1801, 136.1802[~~KRS 136.181, 136.162~~]

STATUTORY AUTHORITY: [~~KRS Chapter 13A~~]; KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky. This administrative regulation addresses issues relating to apportioning the value of a taxpayer's watercraft to Kentucky.[~~requires information concerning mileage operated by nonresident watercraft for allocating mileage operated in Kentucky to total mileage.~~]

Section 1. Definitions. (1) "Corporation" has the same meaning as in KRS136.1801(1).

(2) "Watercraft" has the same meaning as in KRS 136.1801(2).

(3) "Department" shall mean Department of Revenue.

Section 2.[~~1~~] Apportionment. If the apportionment factor set forth in KRS 136.1802(4) does not fairly represent the extent of the corporation's watercraft activity in Kentucky, the corporation may petition for, or the Department may require, any other method to fairly represent an equitable apportionment of the corporation's watercraft to Kentucky. [~~Any nonresident owner or operator of watercraft, whose route or system is partly within this state and partly within another state or states, shall report to the Revenue Cabinet by March 1 of each year mileage operated in Kentucky and mileage operated out-of-state of each boat, tug, barge, and other watercraft for the immediate preceding calendar year. For purposes of reporting mileage operated, total mileage on the Ohio River and one-half (1/2) the mileage on the Mississippi River shall be considered as mileage within the state.~~]

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: May 10, 2011

FILED WITH LRC: May 18, 2011 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 28, 2011 from 10:00 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 cancelled. 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 until August 1, 2011. 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: 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: The proposed amended regulation resolves issues regarding the regulation's authority and application to the taxation of commercial watercraft under the existing statutes. It further provides for a mechanism for commercial watercraft taxpayers to request relief from the possible unfair application of the undefined statutory term "route" in KRS 136.1802(4).

(b) The necessity of this administrative regulation: The existing regulation relates to statutes that were repealed effective January 1, 2008, and therefore, is not relevant to the current statutes, KRS 136.1801 and 136.1802. Further, the regulation provides guidance for taxpayers regarding the determination of the "route," an undefined statutory term in KRS 136.1802(4). As applied to some taxpayers, apportionment under KRS 136.1802(4) could be unfairly skewed towards the Commonwealth, increasing the tax burden on commercial watercraft with little contact with the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Department of Revenue has general authority under KRS 131.130(1) to promulgate administrative regulations for the administration and enforcement of tax laws. This admended regulation will relate to watercraft assessment statutes currently applied.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This will assist in the uniform assessment of commercial watercraft.

(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: See responses to (1) (a) and (1) (b).

(b) The necessity of the amendment to this regulation: See response to (1) (b).

(c) How the amendment conforms to the content of the authorizing statute: See (1) (c)

(d) How the amendment will assist in the effective administration of the statutes: See (1) (d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 280 commercial watercraft entities, 40 counties, 54 schools districts, 49 cities, 40 fire districts. See attached spread sheet for greater detail.

(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: Taxpayers will be required to contact the DOR to request apportionment relief.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Unknown, but should be no additional costs because taxpayers are currently filing returns.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? The regulation should provide taxpayers with greater administrative guidance regarding apportionment.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: No additonal costs will be incurred.

(a) Initially:

(b) On a continuing basis:

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

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

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

(9) TIERING: Is tiering applied? No

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? Both the state and

all local taxing units as defined in KRS 136.1801(5).

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS131.130, KRS 136.1802(4), and United States Constitution, art. I, sec. 8, cl. 3 and U. S. Const. amend. XIV.

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 are expected, no additional state revenues and local tax revenues are anticipated.

(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 state revenues and local tax revenues are anticipated.

(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 state revenues and local tax revenues are anticipated.

(c) How much will it cost to administer this program for the first year? No additional costs are expected as opposed to previous year's costs.

(d) How much will it cost to administer this program for subsequent years? No additional costs are expected as opposed to previous year's costs.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Amendment)

105 KAR 1:140. Employer's administrative duties [~~Contribution reporting~~].

RELATES TO: KRS 18A.105, 61.546, 61.552(23), 61.569, 61.637(17), 61.675, 61.685, 61.702, 78.545(37), 78.616, 78.625, 200 KAR 12:030[~~16.505-16.652, 61.510-61.705, 78.510-78.852~~,] 26 U.S.C. 401(a)(17), 26 U.S.C. 401(a)(17)(B), 26 U.S.C. 401(a)(31), 26 U.S.C. 403(b), 26 U.S.C. 408(a), (b), 26 U.S.C. 414 (g)(6), 26 U.S.C. 457(b), 42 C.F.R. Section 423.504(b)(4)(vi), 45 C.F.R. Sections 160, 162, and 164, Pub. L. 104-191; Pub. L. 111-5, Div. A Title XIII and Div. B, Title IV.

STATUTORY AUTHORITY: KRS 61.645(9)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) requires the Board of Trustees of the Kentucky Retirement Systems to promulgate 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 to 78.852. Employers participating in the Kentucky Employees Retirement System, County Employees Retirement System and State Police Retirement System are required to make contributions to the retirement systems, to report creditable compensation [~~and contributions~~] to the retirement systems and other information that the Board of Trustees may require and perform other duties and responsibilities as participating employers. 26 U.S.C. 401(a)(17) places a limit on the amount of creditable compensation on which contributions may be made. This administrative regulation sets out the reporting requirements for all participating agencies.

Section 1. (1) Each employer shall submit the reports required under KRS 61.675 and KRS 78.625 electronically using the secure Kentucky Retirement Systems' Employer Self Service website by:

(a) the Enter Report Details Module; or

(b) by uploading an electronic file in the format specified in the Employer Contribution Record Layout.[~~report the creditable compensation and contributions of its employees at least once per month on the Form 3, Summary of Wages Earned, or by diskette or tape in the electronic format "KRSPAY" or other electronic format acceptable to the retirement system. Each employer who reports on diskette or tape may report on a semimonthly basis. Each employer shall report only the creditable compensation earned during the period for which the report is prepared and shall report only the employee and employer contributions on the basis of this creditable compensation.~~]

(2) The retirement systems shall notify each employer of the web address of the secure Kentucky Retirement Systems' Employer Self Service website and shall notify each employer if the web address of the secure Kentucky Retirement Systems' Employer Self Service website changes.

(3)(a) Each employer shall submit the contributions required under KRS 61.675 and KRS 78.625:

(i) electronically using the secure Kentucky Retirement Systems' Employer Self Service website;

(ii) by mailing or hand-delivering a check;

(iii) by the eMARS system maintained by the Finance and Administration Cabinet; or

(iv) by wire transfer.

(4) The employer shall report all creditable compensation paid during a month by the 10th day of the following month;

(a) The employer shall designate the month to which the creditable compensation should be applied if it is not the month for which the employer is reporting when:

i. the month the creditable compensation was earned is the month in which the employee became employed;

ii. the month the creditable compensation was earned is the month in which the employee became eligible to participate in one of the systems administered by Kentucky Retirement Systems;

iii. the month the creditable compensation was earned is the month in which the employee was transferred to hazardous coverage from nonhazardous participation;

iv. the month the creditable compensation was earned is the month in which the employee was transferred from hazardous coverage to nonhazardous participation;

v. the month the creditable compensation was earned is the month in which the employee terminated from employment;

vi. the month the creditable compensation was earned is the month in which the employee became ineligible to participate in one of the systems administered by Kentucky Retirement Systems;

(b) If the employee is paid creditable compensation in a lump-sum or nonrecurring payment, the employer shall designate the reason for the lump-sum or nonrecurring payment;

(i) If the lump-sum or nonrecurring payment was earned during a specific time period, the employer shall designate the time period during which the lump-sum or nonrecurring payment was earned;

(ii) If the employer fails to designate a specific time period during which the lump-sum or non-recurring payment was earned, the retirement systems shall be considered a lump-sum bonus pursuant to KRS 16.505(8), 61.510(13), or 78.510(13).

(5) The provisions paragraph 1 of this section shall not apply to the Kentucky Personnel Cabinet or agencies that are reported by the Kentucky Personnel Cabinet. [~~Creditable compensation for a lump-sum bonus, severance pay, or an employer-provided payment for purchase of service credit shall be made in accordance with the provisions of KRS 16.505(8), 61.510(13), or 78.510(13). Total service shall include all service credit earned as of the date of the report or purchase.~~]

(6)(a) An employer may request a waiver from the provisions of paragraph (1) of this section by filing the Form 7073, "KRS Electronic Reporting Waiver", if the employer does not have the computer equipment, technology, or internet access to report under the provisions of paragraph (1) of this section;

(b) A waiver granted under this paragraph shall last for a period of one (1) year. An employer may file a request for waiver each year after the expiration of the waiver from the previous year;

(c) An employer who is granted a waiver under this paragraph shall pay an administrative fee of $150.00 per month; and

(d) An employer who is granted a waiver may begin electronic reporting under paragraph (1) before the expiration of the waiver.

(7) Each employer shall report their employees who are regular full-time employees as defined by KRS 61.510(21) and KRS 78.510(21) and shall remit employer and employee contributions for those employees.

(8) Each employer shall report their employees who are not regular full-time employees as defined by KRS 61.510(21) and KRS 78.510(21), but shall not remit employer or employee contributions for those employees unless required to do so pursuant to KRS 61.680(6).

Section 2. (1) Each employer shall submit electronic mail to the retirement systems by logging on to the Kentucky Retirement Systems' secure electronic mail server.

(2)(a) If an employer submits personal information about its employees to the retirement systems in an unsecure electronic format or submits personal information regarding its employees intended to be submitted to the retirement systems to another person or entity by hand-delivery, mail, fax, or in an electronic formant; the employer shall notify its affected employees in writing of the disclosure of their personal information and provide information regarding obtaining their credit reports.

(b) Personal information includes the member's first name or first initial and last name in combination with the member's:

i. Social Security number;

ii. Driver's License Number;

iii. Personal Identification Number permitting access to the member's account; or

iv. Medical Information.

(c) The retirement systems shall notify the employer of a disclosure upon discovery;

(d) The employer shall notify the retirement systems of a disclosure upon discovery;

(e) The employer shall submit a draft of the written notification to be made to its affected employees to the retirement systems for approval;

(f) The employer shall submit copies of the written notifications made to its affected employees to the retirement systems after the notifications have been made;

(g) If the retirement systems is required by federal or state law to provide notification to its affected members about the employer's disclosure of their personal information or if the retirement systems determines that it should provide the notification to its affected members because of the nature or magnitude of the employer's disclosure, the employer shall reimburse the retirement systems for its costs in notifying its members affected by the employer's disclosure;

(h) In transmitting any medically related personal information, the employer shall comply by all statutes and regulations comprising the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Public Law 104-191 and the Health Information Technology for Economic and Clinical Health Act ("HITECH"), Public Law 111-5.

(i) Each employer shall execute a data use agreement with retirement systems.

Section 3. (1)(a) The retirement systems shall submit an invoice to employers for any payments owed to the retirement systems, which were not paid through the normal monthly reports;

(b)The employer shall remit payment to the retirement systems by the due date provided on the invoice;

(2) The retirement systems may offset funds owed by the employer to the retirement systems with funds owed to the employer by the retirement systems.

Section 3. (1) An employer shall pay interest at the rate adopted by the board for any creditable compensation paid as a result of an order of a court of competent jurisdiction, the Personnel Board, or the Human Rights Commission or for any creditable compensation paid in anticipation or settlement of an action before a court of competent jurisdiction, the Personnel Board, or the Human Rights Commission including notices of violations of state or federal wage and hour statutes or violations of state or federal discrimination statutes.

(2) The interest shall be assessed from the time period for which the creditable compensation has been reinstated.

Section 4. If an employer refuses to provide the retirement systems access to records or information requested in accordance with KRS 61.685 or does not respond to a request for information or records by the retirement systems, the retirement systems may:

(a) Hold all payments of any funds due to the employer; or

(b) Hold payments of refunds or initial retirement allowances to any employee or former employee of the employer whose refund or retirement may be affected by the records or information requested by the retirement systems.

Section 5. (1)[~~(3)~~](a) Effective July 1, 1996, and before July 1, 2002, the creditable compensation on which contributions are reported shall not exceed the maximum annual compensation limit contained in 26 U.S.C. 401(a)(17), $150,000, as adjusted for cost-of-living increases under 26 U.S.C. 401(a)(17)(B). The retirement system shall notify employers of the maximum annual compensation limit. Each employer shall report contributions on all creditable compensation up to the maximum annual limit. Once an employee's creditable compensation has reached the maximum annual limit, the employer shall continue to report the employee's creditable compensation but shall not report any further employer or employee contributions on the employee's creditable compensation. If excess contributions are erroneously reported, the retirement system shall refund the excess contributions to the employer for distribution to the employee after making payroll deductions in accordance with federal and state law.

(b) Effective only for the 1996 plan year, in determining the compensation of an employee eligible for consideration under this provision, the rules of 26 U.S.C. 414(g)(6) shall apply, except that in applying these rules, the term "family" shall include only the spouse of the member and any lineal descendants of the employee who have not attained age nineteen (19) before the close of the year.

(c) Effective with respect to plan years beginning on and after July 1, 2002, the annual compensation of a plan member which exceeds $200,000 (as adjusted for cost-of-living increases in accordance with 26 U.S.C. 401(a)(17)(B) shall not be taken into account in determining benefits or contributions due for any plan year. Annual compensation shall include compensation during the plan year or such other consecutive twelve (12) month period over which compensation is otherwise determined under the plan (the determination period). The cost-of-living adjustment in effect for a calendar year shall apply to annual compensation for the determination period that begins with or within the calendar year. If the determination period consists of fewer than twelve (12) months, the annual compensation limit shall be an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is twelve (12). If the compensation for any prior determination period is taken into account in determining a plan member's contributions or benefits for the current plan year, the compensation for this prior determination period shall be subject to the applicable annual compensation limit in effect for that prior period.

(d) A participating member may pay contributions for the creditable compensation over the maximum annual compensation limit for the years used to determine the member's final compensation for purposes of retirement if:

1. The member's creditable compensation has exceeded the maximum annual compensation limit contained in 25 U.S.C. 401(a)(17) in years prior to the fiscal year beginning July 1, 2002;

2. The member has filed a notification of retirement; and

3. The excess creditable compensation is within the maximum annual compensation limit applicable in 2002-2003. Upon receipt of employee contributions, the retirement systems shall bill the employer for the employer contributions on the excess creditable compensation, and the employer shall remit the employer contributions to the retirement systems. The excess shall only be included in retirement calculations if both the employee and employer have paid their respective contributions. [~~Section 2. If creditable compensation in excess of actual compensation is reported, the employer shall request a refund of the excess employer and employee contributions. The retirement system shall remit the excess employer and employee contributions to the employer in the form of checks made payable to the employer. The employer shall distribute the employee's contributions to the employee if the amount is due the employee after making payroll deductions in accordance with federal and state law.~~

~~Section 3. If creditable compensation is reported that is less than actual creditable compensation paid to the employee by the employer, the employer shall report the deficiency by pay period to~~

~~the retirement system along with the employer and employee contributions owed as a result of the deficiency. The employer may report the additional creditable compensation by letter or other form which shall include:~~

~~(1) The Social Security number, name, and gross creditable compensation of the employee by pay period.~~

~~(2) The total employer and employee contributions required on the additional creditable compensation and the computation of both amounts.~~

~~(3) The signature of the individual authorized by the agency to report contributions to the retirement system.~~

~~Section 4.If an expense allowance is paid to a county official by the state, the state shall withhold the employee contributions applicable to the amount and remit it to the retirement system on behalf of the county. The county shall report the employer contributions on the Form 3-E, Expense Allowances Quarterly Report.~~

~~Section 5. An employer may change the name or address of an employee by submitting a letter or personnel document effecting the change signed by a personnel or payroll official.~~

~~Section 6. Upon request, each employer shall provide to the retirement system information relating to all employee wages, employment status, or other employment related information using Form 3, "Summary of Wages Earned" and Form 3-E, "Expense Allowances Quarterly Report. Upon request, each employer shall make all relevant records related to its employees available to the retirement system during regular working hours.~~]

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

(a) Form 7073, "KRS Electronic Reporting Waiver", May 2011.[~~"Form 3, Summary of Wages Earned, June 1991", Kentucky Retirement Systems; and~~

~~(b) "Form 3-E, Expense Allowances Quarterly Report, July 1991", Kentucky Retirement Systems.~~]

(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 40601-6124, Monday through Friday, 8 a.m. to 4:30 p.m.

JENNIFER L. ELLIOTT, Chair

APPROVED BY AGENCY: June 1, 2011

FILED WITH LRC: June 13, 2011 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2011 at 9:00 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1270 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: Jennifer A. Jones

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures and requirements for employers to provide reports and contributions to Kentucky Retirement Systems.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures and requirements for employers to provide reports and contributions to Kentucky Retirement Systems

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes provide that employers must file contributions and reports at the retirement systems. This administrative regulation provides the procedures and requirements for employers to file reports and contributions at the retirement systems.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the procedures and requirements for employers to file reports and contributions with the retirement systems.

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

(a) How the amendment will change this existing administrative regulation: The amendment changes the existing administrative regulation by changing the requirements of reporting to electronic reporting and electronic payment of contributions. An employer may request an exception to the electronic reporting and payment requirements if it is not technologically capable of electronic reporting; however, no employer has indicated that it is unable to report electronically. Employers have been involved in the development and testing process. The administrative regulation establishes the parameters for payment of interest on reinstatement of creditable compensation and service credit of employees and for delinquent contributions. The amendment also details the employer responsibilities for unsecure disclosures of its employees' personal information.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to establish the new electronic reporting requirements for employers and disclosure requirements.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by establishing the new electronic reporting procedures and reporting requirements.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by establishing the new electronic reporting requirements and disclosure requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 1774 employers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities will have to download the electronic file if choosing to report via electronic file, check employee data pre-populated into the report by Kentucky Retirement Systems and make corrections/update information, enter new employee data. Entities choosing the employer self-service module will have to sign on to the system using the User ID and Password provided by Kentucky Retirement Systems and establish security questions or change passwords, enter employer information including contact person, users, set up payment accounts for electronic payments, data pre-populated into the report by Kentucky Retirement Systems and make corrections/update information, enter new employee data. The employer will then report electronically each month.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The staff time to implement the necessary steps to set up the electronic reporting, an unknown amount that will vary by employer and any necessary IT assistance if there is no IT staff person.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The reporting will be easier and

more efficient. The employers will not have to access old records to provide necessary information on former or current employees because the employers will be providing information initially, which will save employers work. Employers will be much less likely to file reports or have delinquent contributions, which will save them the interest payment required by statute.

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

(a) Initially: The electronic reporting is part of an ongoing overhaul of the computer system at Kentucky Retirement Systems.

(b) On a continuing basis: The normal administrative costs.

(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 Retirement Allowance Account (trust and agency funds).

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is a fee established if an employer does not report electronically, but there are no employers that have indicated that they will be reporting electronically. There is no increase in fees or funding otherwise.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There is a fee established if an employer does not report electronically, but there are no employers that have indicated that they will be reporting electronically.

(9) TIERING: Is tiering applied? Tiering is not applied. Procedures are the same for all participating employers.

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 member agencies of State Police Retirement System, Kentucky Employees Retirement System, and County Employees Retirement System, which includes member cities and counties and the state government.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.645, 61.675, 61.685, 78.625.

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 cost for initial implementation is unknown, but will involve staff time to set up the electronic reporting and any necessary IT assistance if there is no IT staff person.

(d) How much will it cost to administer this program for subsequent years? There is no additional cost as employers have always been required to report by statute. It might cost the employers less to report.

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

Revenues (+/-):

Expenditures (+/-): The initial costs of setting up the electronic reporting.

Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Amendment)

105 KAR 1:190. Qualified domestic relations orders.

RELATES TO: KRS 16.505(36), (37), (38), 16.576, 16.645(5), 61.510(37), (38), (39), 61.690, 78.510(34), (35), (36), 78.545(26), 205.712, 26 U.S.C. 414(p)

STATUTORY AUTHORITY: KRS 61.645(9)(g), 61.690

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.690 requires the retirement systems to promulgate an administrative regulation establishing the requirements, procedures, and forms necessary to administer qualified domestic relations orders (QDROs). This administrative regulation establishes the requirements, procedures, and forms necessary to administer QDROs.

Section 1. Definitions. (1) "Alternate payee" is defined by KRS 16.505(38), 61.510(39), and 78.510(36).

(2) "Qualified domestic relations order" is defined by KRS 16.505(37), 61.510(38), and 78.510(35).

(3) "Participant" is defined by KRS 16.505(36), 61.510(37), and 78.510(34).

Section 2. The provisions of this section shall only apply to QDROs that were approved by the retirement systems for enforcement prior to July 14, 2000. After the participant notifies the retirement system of the participant's requested effective retirement date, the retirement systems shall administer a QDRO that was entered prior to the participant's retirement as follows:

(1) The retirement systems shall send the participant and the alternate payee information regarding the amount of the benefits payable pursuant to the QDRO.

(2) The amount of the benefits payable pursuant to a QDRO approved for enforcement by the retirement systems prior to July 14, 2000, shall be calculated as follows:

(a) The alternate payee shall receive the amount computed by multiplying the basic option amount due the participant by the percentage allocated to the alternate payee by the terms of the QDRO multiplied by a fraction, the numerator of which shall be the period of service specified in the QDRO and the denominator of which shall be the participant's total service credit. The participant shall be paid all amounts in excess of the amounts paid to the alternate payee.

(b) If a lump sum payment equal to the balance of the participant's account is to be made, the percentage determined by this calculation shall be multiplied by the balance of the participant's account and the result paid to the alternate payee. The participant shall be paid all amounts in excess of the amounts paid the alternate payee.

(c) If a monthly benefit is paid, the options made available to the alternate payee shall be derived from the participant's basic option.

(d) Service added for disability under KRS 61.605 or KRS 16.582 shall not be included in determining the amount payable to the alternate payee. Service credit purchased during the period of marriage shall be included in the calculation under this paragraph.

(e) The payment options offered to the alternate payee shall be based on the alternate payee's life expectancy. The alternate payee shall be offered the payment options described in KRS 61.635 which do not provide lifetime benefits to a beneficiary and, if the participant is eligible, the ten (10) year certain option as provided by KRS 16.576(5).

(f) If the alternate payee predeceases the participant after the participant's retirement, a lump sum, determined actuarially, of the payments remaining to the alternate payee, if any, shall be paid to the alternate payee's estate.

(g) The alternate payee of a QDRO approved for enforcement by the retirement systems prior to July 14, 2000, shall receive increases given recipients under KRS 61.691.

(3) If the participant dies prior to retirement and prior to the death of the alternate payee, the participant's account shall be divided in accordance with the QDRO between the alternate payee and the beneficiary.

(4) If the death benefit is a refund of the participant's accumulated contributions and interest, the alternate payee shall only be offered a lump sum payment representing a portion of the participant's account calculated in accordance with subsection (2) of this section.

(5) If the death benefit is calculated under KRS 16.578 or 61.640, the alternate payee shall be allowed to choose a lifetime annuity, a sixty (60) month certain payment, a 120 month payment, or an actuarial lump sum payment.

(6) If the alternate payee dies prior to the participant's death, retirement, or withdrawal of account, payment shall not be made to the alternate payee.

(7) When benefits become payable to the alternate payee, the retirement system shall establish a separate account for the alternate payee, which shall consist of the alternate payee's pro rata share of the participant's contributions, service, and benefit. Once the alternate payee's account has been established, the alternate payee shall not be entitled to further benefits acquired by the participant.

Section 3. (1) All sections of this administrative regulation, except for Section 2, shall only apply to QDROs approved for enforcement by the retirement systems on or after July 15, 2010.

(2) A QDRO may[~~shall~~] apply to any[~~all~~] retirement systems administered by the Kentucky Retirement Systems as established by KRS Chapters 16, 61, and 78 in which the participant is a member during the period of the marriage that is the subject of the QDRO and from which the participant will receive retirement benefits, except for the retirement systems established by KRS 16.568, 61.663, and 78.652.

(3) A QDRO shall contain the following information:

(a) The participant's name;

(b) The participant's mailing address;

(c) The participant's Kentucky Retirement Systems member identification number or the participant's Social Security Number;

(d) The alternate payee's name;

(e) The alternate payee's mailing address;

(f) The system or systems to which the QDRO applies;

(g) The amount or percentage to be paid to the alternate payee;

(h) When payments under the QDRO are to end;

(i) How the cost of living increase provided in KRS 61.691 is to be administered, if administration is not otherwise provided for by KRS 61.690; and

(j) All information required on the form that applies to the subject matter of the order:

1. Form 6434, Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property;

2. Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property;

3. Form 6436, Qualified Domestic Relations Order for Child Support;

4. Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency; or

5. Form 6438, Qualified Domestic Relations Order for Alimony/Maintenance.

Section 4. (1) The participant shall sign and submit a Form 6433, Authorization for Release of Information and Request for Information for Qualified Domestic Relations Order to obtain the information necessary for the Court to calculate the amount due to the alternate payee for purposes of the QDRO.

(a) The participant shall provide the retirement systems with the following information:

1. The participant's and the alternate payee's Social Security numbers;

2. The participant's and the alternate payee's dates of birth;

3. Date of marriage;

4. Date of divorce;

5. The participant's and the alternate payee's mailing addresses; and

6. The addresses of the participant's and the alternate payee's legal counsel, if any.

(2) If the participant has not yet retired, the retirement systems shall provide as of the date of the divorce, the participant's:

(a) Accumulated contributions and interest contributed and earned during the marriage in each system in which the participant has marital service;

(b) Total number of months of service credit earned and purchased [~~on file at the systems~~] as of the effective date of the divorce and upon the request in each system in which the participant has service;

(c) The number of months of service credit earned and purchased during the marriage in each system in which the participant has marital service;

(d) The hypothetical monthly retirement benefit pursuant to KRS 61.595 the participant would receive when the participant is eligible for an unreduced retirement benefit based on the final compensation and service credit as of the effective date of the divorce in each system in which the participant has marital service; and

(e) The hypothetical actuarial refund payment option or lump-sum refund payment the participant would receive when the participant is eligible for an unreduced benefit based on the final compensation and service credit as of the effective date of the divorce in each system in which the participant has marital service.

(3) The retirement systems shall use the participant's final compensation as of the date of the divorce and the service credit accrued by the participant during the marriage when calculating the participant's projected basic monthly retirement allowance and the projected actuarial refund or lump-sum refund payment.

(4) If the participant retired prior to the effective date of the divorce, the retirement systems shall provide the participant's:

(a) Current monthly retirement benefit in each system from which the participant is receiving a monthly retirement benefit;

(b) Total [~~The total~~] number of months of service credit earned and purchased during the marriage in each system from which the participant is receiving a monthly retirement benefit; and

(c) Total [~~The total~~] number of months of service credit in each system from which the participant is receiving a monthly retirement benefit.

(5) The Alternate Payee may request and obtain the information necessary for the court to calculate the amount due to the alternate payee for purposes of the QDRO by submitting a Form 6433 and an attached court issued subpoena or order compelling the release of the requested information.

(6) If information other than the information supplied by the retirement systems in accordance with subsections (2) through (4) of this section is required, then the participant shall send an additional signed request for information in writing. The Alternate Payee shall submit an additional request and an attached court issued subpoena or order compelling the release of the requested information. Requests for information other than the information supplied by the retirement systems in accordance with subsections (2) through (4) of this section shall be answered pursuant to KRS 61.661. [~~(5) If information other than the information supplied by the retirement systems in accordance with subsections (2) through (4) of this section is required, then the participant shall send an additional request for information in writing or the court shall issue a subpoena or an order requesting the additional information.~~]

Section 5. (1) A QDRO shall be on the form incorporated by reference that applies to the subject matter of the order.

(2) A QDRO shall be signed by the judge of a court with jurisdiction over the case or by the head of the administrative agency, or their designee, with statutory authority to issue a QDRO.

(3) A QDRO shall be entered and certified by the Clerk of the Court or by the head of the administrative agency, or their designee, with statutory authority to issue a QDRO.

(4) The participant, alternate payee, or their legal counsel shall submit a copy of the entered and certified QDRO to the retirement systems. [~~A copy of the QDRO signed by the Judge and entered by the Clerk of the Court may be submitted if the copy is certified by the Clerk of the Court.~~]

(5)(a) The participant, alternate payee, or their legal counsel shall not submit a QDRO that is before an appellate court and is not final.

(b) The retirement systems shall have no responsibility or liability for payments made pursuant to a QDRO that was submitted in

violation of this subsection that was altered or dissolved by an order of an appellate court of competent jurisdiction.

(6) The participant, alternate payee, or their legal counsel shall submit a certified check or money order in the amount of fifty (50) dollars made payable to the Kentucky State Treasurer as a nonrefundable processing fee with [~~for~~] the QDRO. The retirement systems shall not review the QDRO unless the fee is submitted with the QDRO.

(a) A QDRO shall provide who shall pay the fee, including if the fee is to be divided between the participant and the alternate payee. Only one (1) certified check or money order shall be submitted in payment of the fee.

(b) There shall be no fee required for submission of a Form 6436, Qualified Domestic Relations Order for Child Support or a Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency.

(c) If the dissolution of marriage action was filed in forma pauperis then the retirement systems shall waive the filing fee. A copy of the order allowing the dissolution of marriage action to be filed in forma pauperis shall be submitted to the retirement systems [~~filed~~] with the entered and certified QDRO.

(7) If the retirement systems determines that the QDRO does not comply with KRS 61.690, 26 U.S.C. 414(p), or this administrative regulation the participant, alternate payee, or their legal counsel shall have ninety (90) days from the date the retirement systems' notification of the deficiency was mailed as provided in Section 6(4) of this administrative regulation to submit a corrected QDRO. If a corrected QDRO is not submitted within ninety (90) days of the date of notification then the participant, alternate payee, or their legal counsel shall be required to submit an additional [~~a~~] nonrefundable fifty (50) dollar fee with a QDRO submitted after ninety (90) days.

Section 6. (1) The retirement systems shall determine if the QDRO is complete and qualifies as a QDRO pursuant to KRS 61.690, 26 U.S.C. 414(p), and this administrative regulation.

(a) A QDRO shall not be effective until the retirement systems has determined that it complies with KRS 61.690, 26 U.S.C. 414(p), and this administrative regulation and has approved the QDRO for enforcement.

(b) The retirement systems shall provide notification of its determination within ninety (90) days of the submission of the QDRO during the time period from July 15, 2010 until July 14, 2011.

(c) The retirement systems shall provide notification of its determination within forty-five (45) days of the submission of the QDRO after July 15, 2011.

(2) The retirement systems shall notify the participant, the participant's legal counsel, if known, the alternate payee, and alternate payee's legal counsel, if known, that the QDRO has been approved for enforcement.

(a) If the participant has not yet retired, the retirement systems shall place the QDRO on file until the participant files a notification of retirement or an application for refund.

(b) If the participant has retired, the retirement systems shall begin to enforce the QDRO the month after it is approved for enforcement by the retirement systems.

(3) The alternate payee shall submit a completed Form 6130, Authorization for Deposit of Retirement Payment, or a Form 6135, Payment of Retirement Payment by Check, prior to receiving payment under a QDRO. If the alternate payee has not submitted a completed Form 6130, Authorization for Deposit of Retirement Payment, or a Form 6135, Payment of Retirement Payment by Check, by the last day of the month before the first payment under the QDRO is due to be paid to the alternate payee, the retirement systems shall: [~~segregate and hold the alternate payee's payments until the alternate payee has submitted the required form.~~]

(a) Segregate and hold the alternate payee's payments;

(b) Hold the segregated amount for a period of no more than the eighteen (18) months;

(c) If a valid Form 6130, Authorization for Deposit of Retirement Payment, or a Form 6135, Payment of Retirement Payment by Check, is submitted within the eighteen (18) month hold period, pay the segregated amount to the alternate payee;

(d) If no valid Form 6130, Authorization for Deposit of Retirement Payment, or a Form 6135, Payment of Retirement Payment by Check, is submitted within the eighteen (18) month hold period, pay the segregated amount to the participant;

(e) If after the eighteen (18) month hold period expires a valid Form 6130, Authorization for Deposit of Retirement Payment, or a Form 6135, Payment of Retirement Payment by Check, is submitted the QDRO shall only be applied prospectively.

(f) The eighteen (18) month time period begins on the date the first payment was required by the QDRO approved for enforcement by the retirement systems.

(4) If the retirement systems determines that the QDRO does not comply with KRS 61.690, 26 U.S.C. 414(p), or this administrative regulation, the retirement systems shall notify the participant, the participant's legal counsel, if known, the alternate payee, and alternate payee's legal counsel, if known, that:

(a) The retirement systems has determined the QDRO does not comply with KRS 61.690, 26 U.S.C. 414(p), or this administrative regulation;

(b) The reason for the determination that the QDRO does not comply with KRS 61.690, 26 U.S.C. 414(p), or this administrative regulation; and

(c) The changes necessary to make the QDRO in compliance with KRS 61.690, 26 U.S.C. 414(p), and this administrative regulation.

Section 7. (1) If a QDRO approved for enforcement and on file at the retirement systems is amended or terminated, the participant, alternate payee, or their legal counsel shall submit the amended entered and certified QDRO or an entered and certified order terminating the QDRO to the retirement systems as provided in Section 5 of this administrative regulation.

(2) The participant, alternate payee, or their legal counsel shall submit a certified check or money order in the amount of twenty-five (25) dollars made payable to the Kentucky State Treasurer as a nonrefundable processing fee for the amended QDRO or order terminating the QDRO. The retirement systems shall not review the amended QDRO or order terminating the QDRO unless the fee is submitted with the amended QDRO or order terminating the QDRO.

(a) If the dissolution of marriage action was filed in forma pauperis then the retirement systems shall waive the filing fee. A copy of the order allowing the dissolution of marriage action to be filed in forma pauperis shall be submitted to the retirement systems [~~filed~~] with the entered and certified QDRO.

(b) There shall be no fee required for submission of a Form 6436, Qualified Domestic Relations Order for Child Support, or a Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency.

(3) The retirement systems shall review the amended QDRO using the same procedures found in Section 6 of this administrative regulation.

(4) If the retirement systems determines that the amended QDRO does not comply with KRS 61.690, 26 U.S.C. 414(p), and this administrative regulation or that the order terminating the QDRO is insufficient the participant, alternate payee, or their legal counsel shall have ninety (90) days from the date the retirement systems' notification of the deficiency was mailed as provided in Section 6(4) of this administrative regulation to submit a corrected amended QDRO or a corrected order terminating the QDRO. If a corrected amended QDRO or a corrected order terminating the QDRO is not submitted within ninety (90) days of the date of notification then the participant, alternate payee, or their legal counsel shall be required to submit an additional [~~a~~] nonrefundable twenty-five (25) dollar fee with an amended QDRO or order terminating the QDRO that is submitted after ninety (90) days.

(5) An amended QDRO or an order terminating a QDRO approved by the retirement systems shall only be administered prospectively.

Section 8. All fees collected pursuant to this administrative regulation shall be deposited in the Retirement Allowance Account established in KRS 61.580.

Section 9. (1) A QDRO issued for purposes of division of the

participant's retirement account pursuant to a divorce entered prior to the participant's effective retirement date shall be submitted on the Form 6434, Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property, unless the QDRO is initially submitted following the participant's retirement date.

(2) The effective date of the Form 6434, Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property, shall be the participant's effective retirement date as provided in KRS 590 or, if the Form 6434 is approved following the participant's effective retirement date, the month following the month the Form 6434 was approved for enforcement by the retirement systems. If the participant receives a lump sum payment representing monthly retirement benefits paid retroactively to the participant's effective retirement date, the alternate payee shall receive a portion of the lump sum payment as provided in the Form 6434, Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property. The alternate payee shall not receive a retirement benefit if the participant is not receiving a retirement benefit.

Section 10. The Form 6434, Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property, shall specify the amount to be paid to the alternate payee. The court shall use one (1) of the following methods to calculate the amount to be paid to the alternate payee:

(1) A [~~As a~~] monthly dollar amount if the participant elects a monthly retirement benefit or [~~as~~] a one (1) time lump sum dollar payment if the participant selects the actuarial refund payment option pursuant to KRS 61.635(11) at the participant's retirement, or [~~as~~] a lump sum dollar payment from participant's refund of contributions and interest if the participant elects to terminate his membership pursuant to KRS 61.625; or

(2) A percentage equal to one-half of the participant's basic monthly retirement benefit attributable to any service credit earned or purchased during the marriage pursuant to KRS 61.595 or 16.576, actuarial refund pursuant to KRS 61.635(11), or lump sum payment pursuant to KRS 61.625, which shall be determined as follows: [~~As a percentage of the participant's basic monthly retirement benefit pursuant to KRS 61.595 or 16.576, actuarial refund pursuant to KRS 61.635(11), or lump sum payment pursuant to KRS 61.625, which may be determined as follows:~~]

(a) The numerator of the fraction shall be the number of months during which the participant was both a contributing member of [~~any of~~] the retirement systems affected by the QDRO [~~administered by Kentucky Retirement Systems~~] and married to the alternate payee, including service purchased during the marriage. The retirement systems shall utilize the marital period as provided by the court in the QDRO;

(b) The denominator of the fraction, which shall be determined by the retirement system as of the participant's effective retirement date or the participant's termination date prior to the participant's filing of a request for a refund of contributions and interest, shall be the total number of months of service credit used to calculate the participant's retirement payment options or the total number of months of service credit the participant had at the time of the request for refund of contributions and interest; and

(c) The resulting fraction shall be converted to a percentage, which shall be divided by two (2) to determine the percentage of the benefit due to the alternate payee; or

(3) An alternative percentage of the participant's basic monthly retirement benefit pursuant to KRS 61.595 or 16.576, actuarial refund pursuant to KRS 61.635(11), or lump-sum payment pursuant KRS 61.625, in the system(s) affected by the QDRO.

Section 11. (1) The provisions of this section shall only apply to participants who were participating [~~whose membership date is~~] prior to August 1, 2004. If a participant who was participating [~~whose membership date is~~] prior to August 1, 2004, and who has a QDRO on file at the retirement systems is awarded disability retirement benefits pursuant to KRS 16.582, 61.600, or 61.621 the alternate payee's portion of the participant's disability retirement benefit shall be calculated as follows:

(a) If the QDRO ordered that the alternate payee be paid a specific dollar amount from the participant's retirement benefit as provided in Section 10(1) of this administrative regulation, the retirement system shall pay the specific dollar amount regardless of any enhancement of the participant's retirement benefit; or

(b) If the QDRO ordered that the alternate payee be paid a percentage of the participant's retirement benefit as provided in Section 10(2) and (3) of this administrative regulation, the retirement systems shall not use the service credit added to the participant's account pursuant to KRS 16.582(5)(a) or 61.605(1) when calculating the amount the alternate payee is due under the QDRO on file at the retirement systems.

(2)(a) If the participant's disability retirement benefits are discontinued pursuant to KRS 61.610 and 61.615 and the participant is not eligible to receive early retirement benefits, the alternate payee's payment shall be discontinued;

(b) If the participant's disability retirement benefits are discontinued pursuant to KRS 61.610 and 61.615 and the participant's benefit is changed to the participant's early retirement benefit, the alternate payee shall receive payment from the early retirement benefit pursuant to the QDRO;

(c) If the participant's disability retirement benefits are reinstated pursuant to KRS 61.615, the alternate payee's payment shall be reinstated;

(d) If the participant later begins receiving early retirement benefits while his disability retirement benefits are discontinued, the alternate payee shall receive payment from the early retirement benefit pursuant to the QDRO.

Section 12. (1) The provisions of this section shall only apply to participants whose participation began [~~membership date is~~] on or after August 1, 2004. If a participant whose participation began [~~membership date is~~] on or after August 1, 2004, and who has a QDRO on file at the retirement systems is awarded disability retirement benefits pursuant to KRS 16.582, 61.600, or 61.621 the alternate payee's portion of the participant's disability retirement benefit shall be calculated as follows: [~~provided in Section 11(1)(a) and (b) of this administrative regulation.~~]

(a) If the QDRO ordered that the alternate payee be paid a specific dollar amount from the participant's retirement benefit as provided in Section 10(1) of this administrative regulation, the retirement system shall pay the specific dollar amount regardless of any enhancement of the participant's retirement benefit; or

(b) If the QDRO ordered that the alternate payee be paid a percentage of the participant's retirement benefit as provided in Section 10(2) and (3) of this administrative regulation, the retirement systems shall use the participant's benefit pursuant to KRS 16.582(5)(b) or 61.605(2) when calculating the amount the alternate payee is due under the QDRO on file at the retirement systems.

(2)(a) If the participant's disability retirement benefits are discontinued pursuant to KRS 61.610 and 61.615 and the participant is not eligible to receive early retirement benefits, the alternate payee's payment shall be discontinued;

(b) If the participant's disability retirement benefits are discontinued pursuant to KRS 61.610 and 61.615 and the participant's benefit is changed to the participant's early retirement benefit, the alternate payee shall receive payment from the early retirement benefit pursuant to the QDRO;

(c) If the participant's disability retirement benefits are reinstated pursuant to KRS 61.615, the alternate payee's payment shall be reinstated;

(d) If the participant later begins receiving early retirement benefits while his disability retirement benefits are discontinued, the alternate payee shall receive payment from the early retirement benefit pursuant to the QDRO.

Section 13. (1) A QDRO issued for purposes of division of the participant's retirement account pursuant to a divorce decree entered after the participant's effective retirement date, or initially submitted to the retirement system following the participant's effective retirement date, shall be submitted on the Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property.

Section 14. (1) The Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, shall

specify the amount to be paid to the alternate payee.

(2) The court shall use one (1) of the following methods to calculate the amount to be paid to the alternate payee:

(a) As a monthly dollar amount;

(b) As a percentage of the participant's selected monthly retirement benefit [~~pursuant to KRS 61.595,~~] which shall[~~may~~] be determined as follows:

1. The numerator of the fraction shall be the number of months during which the participant was both a contributing member of the retirement systems affected by the QDRO and married to the alternate payee, including service purchased during the marriage. The retirement systems shall utilize the marital period as provided by the court in the QDRO;[~~The numerator of the fraction shall be the number of months during which the participant was both a contributing member of any of the retirement systems administered by Kentucky Retirement Systems and married to the alternate payee, including service purchase during the marriage.~~]

2. The denominator of the fraction, shall be the total number of months of service credit used to calculate the participant's retirement payment option; and

3. The resulting fraction shall be converted to a percentage, which shall be divided by two (2) to determine the percentage of the benefit due to the alternate payee[~~.~~]; or

(c) An alternative percentage of the participant's selected monthly retirement benefit in the system(s) affected by the QDRO.

Section 15. (1)(a) If the retirement systems determines that the Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, does not comply with KRS 61.690, 26 U.S.C. 414(p), or this administrative regulation, the retirement systems shall:

1. Segregate and hold the amount that would have been payable to the alternate payee if the Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, had been in compliance with KRS 61.690, 26 U.S.C. 414(p), and this administrative regulation;

2. Hold the segregated amount for a period of no more than the eighteen (18) month hold period;

(A) The eighteen (18) month hold period begins on the date the first payment would be required by the Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, that the retirement systems determined was not in compliance with KRS 61.690, 26 U.S.C. 414(p), and this administrative regulation.

3. If a Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, is submitted and determined to be in compliance with KRS 61.690, 26 U.S.C. 414(p), and this administrative regulation within the eighteen (18) month hold period, pay the segregated amount to the alternate payee;

4. If no subsequent Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, is submitted and determined to be in compliance with KRS 61.690, 26 U.S.C. 414(p), and this administrative regulation within the eighteen (18) month hold period, pay the segregated amount to the participant; or

5. If after the eighteen (18) month hold period a subsequent Form 6435, Post-Retirement Qualified Domestic Relations Order, is submitted and determined to be in compliance with KRS 61.690, 26 U.S.C. 414(p), and this administrative regulation, the Form 6435, Post-Retirement Qualified Domestic Relations Order shall only be applied prospectively. [~~(b) The eighteen(18) month time period begins on the date the first payment would be required by the Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property that the retirement systems determined was not in compliance with KRS 61.690, 26 U.S.C. 414(p), and this administrative regulation.~~]

(2) The effective date of the first payment to the alternate payee shall be the month following the month the Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, is approved for enforcement by the retirement systems.

Section 16. (1) A QDRO issued for purposes of payment of child support shall be submitted on the Form 6436, Qualified Domestic Relations Order for Child Support, or the Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency.

(2) The monthly dollar amount of child support to be paid by the participant shall be determined by a court of competent jurisdiction or an administrative agency with statutory authority to issue an order for child support in accordance with the laws governing child support.

(3) The retirement systems shall remit the payment for child support to the centralized registry established pursuant to KRS 205.712 and defined in 921 KAR 1:001, Section 1(5).

(a) The payment for child support shall be made payable to "Kentucky Child Support Enforcement".

(b) The participant's name and Social Security number shall be noted on the payment.

(4) An alternate payee listed on the Form 6436, Qualified Domestic Relations Order for Child Support, or the Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency shall not be required to submit a Form 6130, Authorization for Deposit of Retirement Payment or a Form 6135, Payment of Retirement Payment by Check.

(5) The retirement systems shall not accept a Form 6436, Qualified Domestic Relations Order for Child Support, or a Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency, if the participant has not retired and is not receiving a monthly retirement benefit.

Section 17. (1) A QDRO issued for purposes of payment of alimony or maintenance pursuant to KRS 403.200 shall be submitted on the Form 6438, Qualified Domestic Relations Order for Alimony/Maintenance.

(2) The amount of alimony or maintenance to be paid by the participant shall be determined by a court of competent jurisdiction in accordance with the laws governing alimony or maintenance.

(3) The retirement systems shall not accept a Form 6438, Qualified Domestic Relations Order for Alimony/Maintenance if the participant has not retired and is not receiving a monthly retirement benefit.

Section 18. (1) The participant shall be responsible for notifying the retirement systems in writing of an event which causes payments to the alternate payee under a QDRO for Division of Marital Property or a QDRO for Alimony/Maintenance to end.

(2) The retirement systems shall hold any payments due the alternate payee pending submission of proof of the event which causes payments to the alternate payee to end is provided by the participant beginning the month after the retirement systems' receipt of the participant's written notification.

(3) The participant shall submit a copy of the alternate payee's marriage certificate, the alternate payee's death certificate, or other reliable documentation as proof of the event which causes the participant's alimony or maintenance to end.

(4) The participant shall submit a copy of the alternate payee's death certificate or other reliable documentation as proof of the event which causes the participant's payments pursuant to the division of marital property to end.

(5) The participant shall not be required to submit written notification if the QDRO specifies the number of months of payments.

(6) If proof is not submitted within ninety (90) days of the written notification to the retirement systems, the payments being held shall be released to the alternate payee.

(7) The retirement systems shall not be liable for any payments made to the alternate payee if the participant failed to provide proper notification and documentation of the event that causes payments to the alternate payee to end.

Section 19. (1) The participant shall be responsible for notifying the retirement systems in writing of an event which causes payments to the alternate payee under a QDRO for Child Support to be amended or to end.

(2)(a) If an alternate payee is being paid child support pursuant to a Form 6436, Qualified Domestic Relations Order for Child Support, or the Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency, the participant shall

submit an entered and certified order from a court of competent jurisdiction or an administrative agency with statutory authority to order child support providing that payments under the Form 6436, Qualified Domestic Relations Order for Child Support, or the Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency, shall end or be amended.

(b) The retirement systems shall segregate and hold the payments due to the alternate payee under a Form 6436, Qualified Domestic Relations Order for Child Support, or the Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency, if the participant submits an order changing the custody of the child to someone other than the alternate payee, a copy of the child's marriage certificate, a letter from the child's high school indicating the child's graduation date, the child's birth certificate, an order of emancipation of the minor child, or the child's death certificate.

1. If the QDRO for child support is for the support of more than one (1) child, the retirement systems shall not segregate or hold payments due to the alternate payee.

(c) If the participant does not submit an entered and certified order amending or terminating the QDRO for child support from a court of competent jurisdiction or an administrative agency with statutory authority to order child support within ninety (90) days of the participant's submission as provided in paragraph (b) of this subsection the payments being held shall be released to the alternate payee.

(3) The retirement systems shall not be liable for any payments made to the alternate payee if the participant failed to provide proper notification, documentation of the event, or the court order that causes payments to the alternate payee to end or be amended.

Section 20. (1) If there are multiple QDROs on file for a participant's account, the QDROs shall be administered in the following order:

(a) QDROs for the Division of Marital Property;

(b) QDROs for Child Support;

(c) QDROs for Alimony/Maintenance.

(2) If multiple QDROs for the Division of Marital Property are on file, they shall be administered in the order of approval by the retirement systems.

(3) If multiple QDROs for Child Support are on file, they shall be administered in the order of approval by the retirement systems.

(4) If multiple QDROs for Alimony/Maintenance are on file, they shall be administered in the order of approval by the retirement systems.

(5) If a QDRO for Child Support is submitted subsequent to the participant's retirement and subsequent to the administration of the QDROs on file at the time of the participant's retirement it shall be given priority over any QDROs for Alimony/Maintenance being administered.

(6)(a) The retirement systems shall not administer a QDRO if enforcement of such QDRO would result in the total amount of payments due to the alternate payees to exceed the participant's monthly retirement benefit under the multiple QDROs approved for enforcement by the retirement systems. The retirement systems shall notify the participant and alternate payees if a QDRO cannot be administered due to the exhaustion of the participant's monthly retirement benefit. [~~If the total amount of the payments due to alternate payees under the QDROs being administered on the participant's account exceeds the amount of the participant's monthly retirement benefit, the retirement systems shall notify the participant and alternate payees under the QDROs that the QDROs cannot be administered due to the exhaustion of the participant's monthly retirement benefit.~~]

(b) The retirement systems shall recalculate the amounts due under the QDROs being administered by the retirement systems on a participant's account after the effective date of any cost of living increase provided pursuant to KRS 61.691.

Section 21. The alternate payee shall be responsible for notifying the retirement systems in writing of any change in mailing address. The retirement systems shall contact the alternate payee at the last known mailing address on file to notify the alternate payee when a benefit subject to the QDRO becomes payable. The retirement systems shall have no duty or obligation to search for or locate an alternate payee.

Section 22. A QDRO shall not provide that the alternate payee be eligible to enroll in the health insurance plan administered by the retirement systems.

Section 23. (1) If the participant's retirement benefit is corrected pursuant to KRS 61.685, the alternate payee's payment shall also be corrected.

(2) If the alternate payee was overpaid because of the error that is being corrected pursuant to KRS 61.685, the retirement systems shall withhold the amount of the overpayment from the alternate payee's payment.

(3) If the alternate payee was underpaid because of the error that is being corrected pursuant to KRS 61.685, the retirement systems shall pay the alternate payee a lump sum payment of the additional funds due from the participant's payment.

Section 24. [~~Any person who attempts to make the retirement systems a party to a domestic relations action in order to determine an alternate payee's right to receive a portion of the benefits payable to the participant pursuant to a QDRO may petition the court for payment of the retirement systems' costs and legal fees.~~]

[~~Section 25.~~] (1) Any person or party who attempts to make the retirement systems a party to a domestic relations action regarding a QDRO or who requests a subpoena be issued for the personal appearance of a representative of the retirement systems to appear at a deposition or in a court or administrative proceeding regarding a QDRO shall reimburse the retirement systems for the travel expenses and services of the retirement systems' representative, or representatives, and the retirement systems' legal counsel, as an administrative fee including:

(a) The Internal Revenue Service standard mileage rate;

(b) Parking and tolls;

(c) Meals if the retirement systems' personnel are required to travel and be away from the retirement office from 6:30 a.m. to 9 a.m., 11 a.m. to 2 p.m., or 5 p.m. to 9 p.m.;

(d) The wages earned by the retirement systems' employees during the time period they are away from the retirement office calculated by multiplying the hourly rate of each employee by the number of hours each employee was away from the office; [~~and~~]

(e) The retirement systems costs and legal fees; and

(f)[~~e~~] Lodging expenses, if necessary.

(2) The retirement systems shall send an estimated amount owed for expenses to the person or party requesting the subpoena.

(a) The person or party shall remit payment for the estimated expenses before the date of appearance ordered in the subpoena.

(b) The retirement systems shall send an invoice for any additional expenses owed by the party or issue a refund for any amount over the cost of the expenses.

Section 26. Neither the retirement systems nor its trustees nor its employees shall have any liability for making or withholding payments in accordance with the provisions of this administrative regulation.

Section 27. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form 6015, "Estimate of a Monthly Retirement Allowance", July 2004;

(b) Form 6434, "Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property", May 2011 [~~July 2010~~];

(c) Form 6435, "Post-Retirement Qualified Domestic Relations Order for Division of Marital Property", May 2011 [~~July 2010~~];

(d) Form 6436, "Qualified Domestic Relations Order for Child Support", May 2011 [~~August 2010~~];

(e) Form 6437, "Qualified Domestic Relations Order for Child Support by an Administrative Agency", May 2011 [~~August 2010~~];;

(f) Form 6438, "Qualified Domestic Relations Order for Alimony/Maintenance", May 2011 [~~July 2010~~];

(g) Form 6130, "Authorization for Deposit of Retirement Payment", April 2010;

(h) Form 6135, "Payment of Retirement Payment by Check", February 2002; and

(i) Form 6433, "Authorization for Release of Information and Request for Information for Qualified Domestic Relations Orders", August 2010.

(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, from 8 a.m. to 4:30 p.m.

JENNIFER L. ELLIOTT, Chair

APPROVED BY AGENCY: June 1, 2011

FILED WITH LRC: June 13, 2011 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2011 at 9:00 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1270 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 1, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: Jennifer A. Jones

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets out the procedures and incorporates the forms necessary for participants and alternate payees to implement property division pursuant to a divorce and for the withholding of maintenance and child support payments from the participant's retirement benefit pursuant to a qualified domestic relations order (QDRO).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide the procedures and incorporate the forms necessary for participants and alternate payees to implement property division pursuant to a divorce and for the withholding of maintenance and child support payments from the participant's retirement benefit pursuant to a QDRO.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the procedures and incorporate the forms necessary for participants and alternate payees to implement property division pursuant to a divorce and for the withholding of maintenance and child support payments from the participant's retirement benefit pursuant to a QDRO as required by KRS 61.690.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the procedures and incorporates the forms necessary for participants and alternate payees to implement property division pursuant to a divorce and for the withholding of maintenance and child support payments from the participant's retirement benefit pursuant to a QDRO.

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

(a) How the amendment will change this existing administrative regulation: This amendment clarifies that a court can assign a percentage of the marital benefit not based on marital property, it establishes the procedure for an alternate payee to obtain information regarding the participant's account if the participant will not file the Form 6433, clarifies the provision for an 18 month hold period, and updates the forms necessary for participants and alternate payees to implement property division pursuant to a divorce and for the withholding of maintenance and child support payments from the participant's retirement benefit pursuant to a QDRO as required by KRS 61.690.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify that a court can assign a percentage of the marital benefit not based on marital property, establish the procedure for an alternate payee to obtain information regarding the participant's account if the participant will not file the Form 6433, clarify the provision for an 18 month hold period, and update the forms necessary for participants and alternate payees to implement property division pursuant to a divorce and for the withholding of maintenance and child support payments from the participant's retirement benefit pursuant to a QDRO as required by KRS 61.690

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 61.690 by clarifying the procedures and incorporate the forms necessary for participants and alternate payees to implement property division pursuant to a divorce and for the withholding of maintenance and child support payments from the participant's retirement benefit pursuant to a QDRO as required by KRS 61.690.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides for the effective administration of the statute by clarifying and defining the procedures and incorporating the forms necessary for participants and alternate payees to implement property division pursuant to a divorce and for the withholding of maintenance and child support payments from the participant's retirement benefit pursuant to a QDRO as required by KRS 61.690.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Participants and alternate payees who divorce and have divided the retirement benefit pursuant to a property settlement or court order, participants paying maintenance pursuant to KRS 403.200 to an alternate payee, participants paying child support to an alternate payee.

(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 submit a properly executed QDRO on the form incorporated into this administrative regulation and the appropriate administrative fee, if applicable.

(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 changes in the fees for compliance with this administrative regulation. There is a $50.00 fee for filing a QDRO and a $25.00 fee for amending a QDRO. The fee is paid by participant, alternate payee, or equally divided between them in accordance with KRS 61.690. There is no fee for child support QDROs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The retirement benefit will be divided in accordance with the QDRO. The alternate payee will receive the payments due under the QDRO.

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

(a) Initially: There is no substantial cost to implementing this amendment.

(b) On a continuing basis: There is no continuing cost other than normal administrative costs.

(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 Retirement Allowance Account (trust and agency funds) and the fees paid for filing and amending of QDROs.

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

(8) State whether or not this administrative regulation estab-

lishes any fees or directly or indirectly increases any fees: This regulation does establish fees.

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 Retirement Systems

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.645, KRS 61.690.

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

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

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

(c) How much will it cost to administer this program for the first year? There is no additional cost for implementing this amendment.

(d) How much will it cost to administer this program for subsequent years? There is 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
Office of Financial Management
(Amendment)

200 KAR 21:010. Procedure for prequalification of underwriters and bond counsel for state bond issues.

RELATES TO: KRS 45A.853

STATUTORY AUTHORITY: KRS 45A.879

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.853(1)(a) provides that a firm shall not be considered for providing underwriting or bond counsel services to the Commonwealth unless the Office of Financial Management [~~and Economic Analysis~~] has qualified the firm prior to the issuance of the request for proposals. KRS 45A.879 authorizes the Office of Financial Management [~~and Economic Analysis~~] to promulgate administrative regulations to carry out these requirements by January 1, 1995. This administrative regulation establishes the procedure for prequalifying underwriting and bond counsel firms.

Section 1. General Requirements for Prequalification of Underwriters and Bond Counsel. (1) The office shall determine, in consultation with each bond issuing agency, the need for issuing requests for proposals for underwriting and bond counsel services for bond issuing agencies.

(2) Based on the determination of need, the office shall draft a request for qualifications for underwriting and bond counsel services for a bond issuing agency which needs the services.

(3) A request for qualifications shall include the following:

(a) A description of the bond issuing agency for which the request for qualifications is being issued;

(b) A requirement that the firm disclose information which would impair the firm's ability to provide the level and type of services needed by the bond issuing agency;

(c) A requirement that the firm certify, by sworn statement, that the firm has complied with campaign finance laws established in KRS 121.015 to 121.056, 121.150, 121.310, 121.320, 121.330 and [~~121A.050~~];

(d) A requirement that the firm certify that it has complied with and is not prohibited by the Executive Branch Code of Ethics, KRS 11A.001 to 11A.990, from entering into a contract with the Commonwealth of Kentucky;

(e) A requirement that the firm certify that it has complied with KRS 45A.485;

(f) A statement that the firm is not prohibited by KRS 45A.863 from entering into a contract with the Commonwealth of Kentucky;

(g) A statement that the Commonwealth shall not be liable for costs associated with a firm's preparation and submission of a response to a request for qualifications; and

(h) A description of the process by which a response to the request for qualifications shall be evaluated by the office.

Section 2. Request for Qualifications for Underwriter Services. (1) If the nature of the requested underwriting services requires the inclusion of information in addition to the requirements established in Section 1 of this administrative regulation, the following elements shall be included:

(a) A description of the history and organization of the firm and its municipal finance department;

(b) If applicable, a summary of the relevant financial advisory experience of the firm;

(c) The audited financial statements of the firm for the previous fiscal year or years;

(d) A list of the relevant underwriter experience of the firm on negotiated municipal bond transactions of issuers of similar type as that of the state bond issuing agencies;

(e) A list of experience and qualifications of the firm representatives proposed to work on issues of the bond issuing agency;

(f) If applicable, a list of the relevant comanaging underwriter experience of the firm on negotiated municipal bond transactions;

(g) If applicable, identification of the lead banker or contact person at the firm and description of his or her experience and qualifications;

(h) Identification of the person in the firm proposed to perform cash flow and debt structuring analyses and a description of his or her experience and qualifications; and

(i) Specific references for the firm's experience and the lead or principal contact person.

(2) If a request for qualifications is for a Kentucky comanaging underwriter, the request for qualifications shall require the firm to:

(a) State the authority of the firm's office located in the Commonwealth to commit capital to an underwriting, independent of some other office of the firm, and the dollar limit, if any;

(b) Identify the firm's underwriter who has responsibility for competitive bond sales in the Commonwealth, and a description of his or her experience and qualifications;

(c) Specific references for the firm's experience and the underwriter in the office located in the Commonwealth;

(d) Provide evidence that the firm has bid on twenty (20) percent of School Facilities Construction Commission supported debt issues and twenty (20) percent of the 100 percent locally-funded school bond issues, within the previous calendar year.

(e) Describe the emphasis the firm's office located in the Commonwealth places on selling the Commonwealth's bonds to retail buyers located in the Commonwealth.

Section 3. Request for Qualifications for Bond Counsel Services. If the nature of the requested bond counsel services requires the inclusion of information in addition to the requirements established in Section 1 of this administrative regulation, the following elements shall be included:

(1) A description of the history and organization of the firm and its municipal finance and tax law department;

(2) A statement of the relevant bond counsel experience of the firm in applicable areas of finance as required by the bond issuing agency for which the request for qualifications is being issued;

(3) A statement of the experience and qualifications of the firm's personnel proposed to work on bond issues of the bond issuing agency;

(4) Proof that the firm is listed as a "municipal bond attorney" in

the most recently published edition of "The Bond Buyer's Municipal Marketplace";

(5) A statement of professional liability insurance coverage showing the limits of the coverage;[~~(6) A certification as to whether the firm's principal place of business is located in Kentucky as defined by KRS 45A.873(3); and~~]

(6)[~~(7)~~] A statement of specific references for the experience of the firm and personnel proposed to work on the bond issues of the bond issuing agency.

Section 4. Advertisement and Mailing of Requests for Qualifications. (1) The office shall advertise the request for qualifications in a financial newspaper or financial publication with national circulation.

(2)(a) A request for qualifications shall be mailed to:

1. Firms that were prequalified during the prior period; and

2. Firms that have requested, in writing, a request for qualifications from the office.

(b) A firm shall notify the office of a change in mailing address.

(3) An interested firm shall file a written response to the request for qualifications prior to the deadline designated in the request for qualifications. A firm that fails to meet the deadline shall be prohibited from participating in the prequalification process for that qualification period.

(4) The office shall inform each responding firm, in writing, of the results of the prequalification process.

Section 5. Certification of Prequalification. (1) A master list of firms prequalified for providing underwriter and bond counsel services shall be certified and maintained by the office.

(2) The office shall conduct the prequalification process on at least a biennial basis.

(3) The office shall accept prequalification applications for consideration outside of the scheduled prequalification period from a firm that, since the last prequalification period:

(a) Has been newly incorporated; or

(b) Has opened a new office in the Commonwealth.

F. THOMAS HOWARD, Executive Director

APPROVED BY AGENCY: June 9, 2011

FILED WITH LRC: June 9, 2011 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on July 28, 2011 at 10:00 a.m. to 12:00 p.m. EST in room 386 of the Capitol Annex, 702 Capitol Avenue, Frankfort, Kentucky 40601. Individuals interested in being heard at the hearing shall notify this agency in writing at least 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by close of business on July 21, 2011, 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 August 1, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: DeVon Hankins, Policy Advisor, 392 Capital 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: This administrative regulation establishes the procedure for prequalifying underwriting and bond counsel firms.

(b) The necessity of this administrative regulation: KRS 45A.853(1)(a) provides that a firm shall not be considered for providing underwriting or bond counsel services to the Commonwealth unless the Office of Financial Management has qualified the firm prior to the issuance of the request for proposals. KRS 45A.879 authorizes the Office of Financial Management to promulgate administrative regulations to carry out these requirements by January 1, 1995. This administrative regulation establishes the procedure for prequalifying underwriting and bond counsel firms.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 45A.853(1)(a) requires that the Office of Financial Management prequalify firms for bond counsel and underwriting services before issuing requests for proposals. The statute does not specify the criteria upon which firms shall be prequalified.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation enables the Office of Financial Management to meet the requirements of KRS 45A.853(1)(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: The necessity of the amendment to this administrative regulation: The amendment will simply remove the reference to a state reciprocal preference statute related only to bond counsel and underwriter services (KRS 45A.873) which was repealed in the 2010 regular session. KRS 45A.490 – 45A.494, the statutes enacted in that session providing for reciprocal preference for Kentucky resident bidders in all state contracts, along with 200 KAR 5:400 which instructs agencies on how to apply the preference, will now apply. The amendment also removes reference to another repealed statute (KRS 121A.050) and makes other technical changes.

(b) How the amendment conforms to the content of the authorizing statutes: The amendment removes the references to repealed statutes and brings the regulation into compliance with the authorizing statutes.

(c) How the amendment will assist in the effective administration of the statutes: The amendment will remove requirements from the regulation that are no longer in effect.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any bond issuing agencies of the Commonwealth as described in KRS 45A.840(3). Bond counsel and underwriters are also affected.

(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: Again, Kentucky resident bidders will still be able to take advantage of the reciprocal preference law in KRS 45A.490 – 45A.494, although the definition of resident bidder has been changed from the previous law.

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

(a) Initially: No additional cost.

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

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees associated with this regulation.

(9) TIERING: Is tiering applied? (Explain why tiering was or was not used.) No. This regulation is applied equally to all firms who wish to be prequalified to provide underwriter or bond counsel services to the Commonwealth.

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? Any bond issuing agencies of the Commonwealth as described in KRS 45A.840(3).

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 45A.879 and KRS 45A.853.

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 has no direct effect on expenditures and 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 regulation does 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 regulation does not generate revenue.

(c) How much will it cost to administer this program for the first year? This regulation is implemented by current Office of Financial Management staff and will incur no additional cost of administration.

(d) How much will it cost to administer this program for subsequent years? This regulation is implemented by current Office of Financial Management staff and will incur no additional cost of administration.

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:

GENERAL GOVERNMENT CABINET
Kentucky Board of Barbering
(Amendment)

201 KAR 14:015. Retaking of examination.

RELATES TO: KRS 317.440 [~~317.420~~], 317.450, 317.570

STATUTORY AUTHORITY: KRS 317.440(1)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317.440(1)(f) requires an administrative regulation pertaining to exam requirements for the Kentucky Board of Barbering. This administrative regulation establishes the conditions if an examinee fails and assures the examinees of the opportunity of retaking the examination.

Section 1. An applicant who has failed [~~Any applicant failing~~] the apprentice examinations two (2) consecutive times shall [~~be required to~~] return to school for eighty (80) additional hours of training prior to being accepted for the third time. Each unsuccessful attempt thereafter shall [~~will~~] require eighty (80) additional hours of training.

(1) An applicant who has failed one (1) portion of the apprentice exam may reapply to sit for the entire exam or the failed portion only.

(2) A passing score on one (1) portion of the apprentice exam shall only be used for a period of one (1) year to exempt the applicant from retaking that portion of the examination.

Section 2. An examination fee shall [~~will~~] be required for each examination.

Section 3. (1) An applicant who has failed one (1) or more portions of the instructor exam may reapply to sit for the entire exam or the failed portion or portions only.

(2) A passing score on one (1) or more portions of the instructor exam shall only be used for a period of one (1) year to exempt the applicant from retaking that portion or portions of the examination.[~~Any barber failing the instructor examination would not be permitted to return for ninety (90) days.~~]

HARTSEL H. STOVALL, Chair

APPROVED BY AGENCY: May 16, 2011

FILED WITH LRC: June 15, 2011 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 25, 2011 at 10:00 a.m. (EST) at 9114 Leesgate Road, Suite 6, Louisville, Kentucky 40222-5055. Individuals interested in being heard at this hearing shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard shall be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 1, 2011. 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: Karen Greenwell, Administrator, Board of Barbering, 9114 Leesgate Road, Suite 6, Louisville, Kentucky 40222-5055, phone (502) 429-7148, fax (502) 429-7149.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Karen Greenwell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the conditions if an examinee fails the exam and assures the examinee of the opportunity of retaking the examination.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to inform an examinee who fails the exam of the process and assures them that they do have the opportunity to retake the exam.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It establishes the conditions of retaking the exam as established by KRS 317.440.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes the conditions if an examinee fails the exam and gives the option for the examinee to retain passing sections up to one (1) year should they choose to.

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

(a) How the amendment will change this existing administrative regulation: This amendment will provide the option for an examinee who fails a portion of the exam but successfully passes another portion to retain the passing portion of the exam up to one (1) year should they so choose. It will further eliminate the restriction of an examinee having to wait ninety (90) days before retaking the instructor exam.

(b) The necessity of the amendment to this administrative regulation. This amendment is necessary to aid the examinees who fail by allowing them to focus on the material for the section of the exam they failed giving them a better opportunity to successfully pass the exam. The amendment further gives them the option to retake the entire exam should they so choose. The amendment also creates more opportunity for an examinee who fails the instructor exam to retake the exam on the next following scheduled instructor exam date rather than having to wait ninety (90) days to retake the exam. The amendments to this administrative regulation are favorable to the examinee as established by KRS 317.440.

(c) How the amendment conforms to the content of the authorizing statutes: The board is authorized to promulgate administrative regulations governing the examinations of applicants as established by KRS 317.440.

(d) How the amendment will assist in the effective administration of the statutes: By establishing the conditions should an examinee fail and assuring the examinee of the opportunity of retaking the examination without an extended waiting period of ninety (90) days.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administra-

tive regulation: Approximately 150 licensed apprentices and approximately 15 instructor examinee applicants annually, who apply to take exams to obtain their apprentice and instructor licenses pursuant to 201 KAR 14:450.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The examinees who fail a portion or portions of the exam will have the option of keeping the passing sections of the exam up to one (1) year should they so choose. Those failing the instructor exam will be given the opportunity to retake the exam on the next scheduled instructor exam date rather than having to wait at least ninety (90) days to retake the exam.

(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:

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

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

(a) Initially: There will be no cost to implement this administrative regulation.

(b) On a continuing basis: There will be no cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There will be no cost to implement this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees 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 nor does it increase any fees either directly or indirectly.

(9) Tiering: Is tiering applied? Tiering was not used because all examinees will be 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? This administrative regulation will impact the Kentucky Board of Barbering and those examinees who fail the apprentice or instructor examination pursuant to KRS 317.440.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The Kentucky Board of Barbering authorizes the action taken by administrative regulation pursuant to KRS 317.440.

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

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

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

(c) How much will it cost to administer this program for the first year? No new costs will be incurred by this administrative regulation amendment.

(d) How much will it cost to administer this program for subsequent years? No new costs will be incurred to administer this administrative regulation amendment 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: Please note that the administrative regulation amendment to 210 KAR 14:015 will not create any new revenues for either the agency or State Government. Further, this amendment will not create any new expenditures for the agency, the licensees or State Government. This administrative regulation amendment simply establishes the option for examinees who fail the exam to retain the passing section of the exam up to one (1) year. Further, this regulation amendment will greatly aid an examinee who fails the instructor exam by allowing them to retake the exam on the next schedule exam date rather than having to wait ninety (90) days before retaking the exam. There are no fee increases and no new fees established by the administrative regulation amendment to 201 KAR 14:015.

GENERAL GOVERNMENT
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 physical therapist applicants meet the qualifications and standards required by KRS Chapter 327, and 327.040(13) authorizes 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 based on successful completion by the applicant of one (1) of the following processes:

(1) Examination;

(2) Endorsement; or

(3) Reinstatement.

Section 2. Examination Candidate. (1)To be eligible for the examination, the applicant shall:

(a) Have successfully completed the academic and clinical requirements of a physical therapy or physical therapist assistant program accredited by CAPTE;

(b) Submit certification of completion by the educational administrator of that program;

(c) Have completed an educational course at least two (2) hours in length that has been approved by the Cabinet for Health and Family Services (CHFS)[~~(CHS)~~] on the transmission, control, treatment, and prevention of human immunodeficiency virus infection and AIDS;

(d) Have successfully completed the Jurisprudence Exam;

(e) Submit a complete and notarized application for credentialing that includes a photo taken within one (1) year;

(f) 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; and

(h) 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.

(3) Effective July 1, 2012, after six (6) failed attempts at either the physical therapist or physical therapist assistant examination, or combination thereof, in any jurisdiction, an applicant shall not be eligible to register for any additional examinations.

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 FSBPT Score Transfer Service to have results submitted to Kentucky.

Section 4. Physical therapist applicants who meet the qualifications for physical therapy licensure by examination may become special candidates for physical therapist assistant certification by examination.

Section 5. To be eligible for credentialing by endorsement, the applicant shall:

(1) Meet the requirements established in Section 2(1)(a) through (f) 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 6[~~5~~]. To be eligible for reinstatement, the applicant shall meet the requirements in 201 KAR 22:040.

Section 7[~~6~~]. A credential issued by the board shall be in effect until March 31 of the next uneven-numbered year.

Section 8[~~7~~]. A foreign-educated physical therapist shall comply with this administrative regulation and 201 KAR 22:070.

Section 9[~~8~~]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Credentialing", August 2010; 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 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: June 13, 2011

FILED WITH LRC: June 14, 2011 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2011, 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 (5) days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 1, 2011. 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 Chapter 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 credential 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 credential 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 and allows the physical therapist to take the physical therapist assistant examination.

(b) The necessity of the amendment to this administrative regulation: To protect the public, this amendment will limit the number of times a candidate may take the exam. It also allows for a person educated as a physical therapist to be eligible to take the physical therapist assistant exam.

(c) How the amendment conforms to the content of the authorizing statutes: The board is authorized to set standards and procedures for licensing.

(d) How the amendment will assist in the effective administration of the statutes: This amendment also protects the public by limiting the number of times an applicant can take the exam.

(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: Physical therapist candidates will be able to register and schedule for the physical therapist assistant exam.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): To allow those physical therapy candidates that have been unsuccessful in passing the national exam to take the physical therapist assistant exam.

(5) Provide an estimate of how much it will cost the administrative body 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: Agency Revenue Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regula-

tion, if new, or by the change if it is an amendment: There will no increase in fees or funding.

(8) State whether or not this administrative regulation 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 therapist and physical therapist assistant 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 KRS 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
Board of Physical Therapy
(Amendment)

201 KAR 22:045. Continued competency requirements and procedures.

RELATES TO: KRS 327.010(1), (2), 327.070

STATUTORY AUTHORITY: KRS 327.040(10)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(10) authorizes the board to promulgate administrative regulations establishing a measure of continued competency as a condition of license renewal. This administrative regulation establishes continued competency requirements and procedures.

Section 1. Definitions. (1) "Contact hour" means a credit earned based on sixty (60) minutes of participation in a physical therapy-related activity.

(2) "Continued competency" means a planned learning experience relating to the scope of physical therapy practice as defined by KRS 327.010(1) if the subject is intervention, examination, research, documentation, education, or management of health care delivery systems.

(3) "Jurisprudence Examination" means an open book tutorial provided by the board on current physical therapy laws and administrative regulations.

Section 2. (1) A credential holder applying for renewal shall have completed the continued competency requirements established in subsections (2) and (3) of this section during the preceding renewal period. Continued competency shall be based on contact hours awarded.

(a) For a physical therapist, the board shall require thirty (30) contact hours as a condition of licensure renewal. These hours shall be obtained as follows:

1. Two (2) hours shall be awarded for the successful completion of the Jurisprudence Examination per biennium;

2. At least eighteen (18) hours shall be earned from Category 1 described in subsection (2) of this section; and

3. No more than ten (10) hours may be earned from Category 2 described in subsection (3) of this section.

(b) For a Physical Therapist Assistant, the board shall require twenty (20) contact hours as a condition of renewal. These hours shall be obtained as follows:

1. Two (2) hours shall be awarded for the successful completion of the Jurisprudence Examination per biennium;

2. At least ten (10) hours shall be earned from Category 1 described in subsection (2) of this section; and

3. No more than eight (8) hours may be earned from Category 2 described in subsection (3) of this section.

(2) Category 1 continued competency shall be any of the following:

(a) Completion of courses, seminars, workshops, symposia or home study courses consisting of at least three (3) contact hours that have been approved by the board, the board's designee, Federation of State Boards of Physical Therapy (FSBPT), the American Physical Therapy Association (APTA) or its components, [~~other health professional licensing boards recognized by the board,~~] or any other physical therapy licensing agency;

(b) Completion or auditing of an accredited postsecondary educational institution credit course.

1. Twelve (12) contact hours shall be awarded for each semester credit hour completed; and

2. Eight (8) contact hours shall be awarded for each quarter credit hour completed;

(c) Presentation of continuing education courses, workshops, seminars, or symposia that have been approved by the board or its designee;

(d) Authorship of a research article, manuscript, or scientific paper, published in the biennium and related to physical therapy. Fifteen (15) contact hours shall be awarded with a maximum of two (2) events per biennium;

(e) A presented scientific poster or scientific platform presentation related to physical therapy. Ten (10) contact hours shall be awarded per event with a maximum of two (2) events per biennium;

(f) Teaching part of a physical therapy or physical therapist assistant credit course if that teaching is not the primary employment of the credential holder. A maximum of twenty (20) contact hours per biennium shall be awarded;

(g) Certification or recertification of clinical specialization within the scope of physical therapy practice. Twenty-eight (28) contact hours shall be awarded per biennium;

(h) Completion of a clinical residency program, or clinical fellowship program. Not more than five (5) contact hours shall be awarded for each week of residency with a maximum of twenty-eight (28) contact hours per program per biennium;

(i) Engaging in the practice of physical therapy as defined by KRS 327.010(2) at least 1,000 hours per biennium. Five (5) contact hours shall be awarded per biennium;

(j) Engaging in the instruction in a CAPTE-accredited physical therapy or physical therapist assistant program at least 1,000 hours per biennium. Five (5) contact hours shall be awarded per biennium;

(k) Appointment to the Kentucky Board of Physical Therapy. Four (4) contact hours shall be awarded per biennium;

(l) Election or appointment to a position of the Kentucky [~~Board of~~] Physical Therapy Association, APTA or [~~Federation of State Boards of Physical Therapy (FSBPT)~~] FSBPT as an officer or committee chair. Four (4) contact hours shall be awarded per biennium; or

(m) Member of a committee or task force for one (1) of the organizations in paragraph [~~(j) or~~] (k) or (l) of this subsection. One (1) contact hour shall be awarded per biennium.

(3) Category 2 continued competency shall be any of the following:

(a) Self-instruction from reading professional literature. One (1) contact hour shall be awarded per biennium;

(b) Attendance at a scientific poster session, lecture, panel, or symposium. One (1) contact hour shall be awarded for each hour of activity. A maximum of two (2) contact hours shall be awarded per biennium;

(c) Clinical instructor for a CAPTE-approved educational program. Continued competency shall be one (1) contact hour per sixteen (16) hours of student supervision;

(d) Participation in a physical therapy in-service or study group consisting of two (2) or more physical therapists or physical therapist assistants. A maximum of two (2) contact hours shall be awarded per biennium;

(e) Completion of other applicable courses consisting of less than three (3) hours in length. One (1) contact hour for each hour of credit shall be awarded per biennium;

(f) Participation in community service related to health care. A maximum of two (2) contact hours of continued competency shall be awarded for two (2) hours per biennium; or

(g) Member of the APTA. One (1) contact hour shall be awarded per year and a maximum of two (2) contact hours per biennium.

(4) Documentation of compliance.

(a) Each licensee shall retain independently verifiable documentation of completion of all continued competency requirements of this administrative regulation for a period of three (3) years from the end of the biennium;

(b) The licensee shall, within thirty (30) days of a written request from the board, provide evidence of continued competency activities to the board; and

(c) A licensee who fails to provide evidence of the continued competency activities or who falsely certifies completion of continued competency activities shall be subject to disciplinary action pursuant to KRS 327.070.

(5) Exemption and extension.

(a) A licensee shall be granted a temporary hardship extension [~~exemption~~] for an extension of time, not to exceed one (1) renewal cycle, if the licensee:

1. Files a completed Extension of Time for Completion of Continuing Competency Form, including a plan describing how the required credits will be met; and

2. Submits documentation showing evidence of undue hardship by reason of the licensee's:

a. Age;

b. Disability;

c. Medical condition;

d. Financial condition; or

e. Other clearly mitigating circumstance.

(b) A licensee shall be granted a temporary nonhardship extension of time if the licensee cannot show undue hardship and if the licensee:

1. Files a completed Extension of Time for Completion of Continuing Competency Form, including a plan describing how the required credits will be met, by March 31 of the odd-numbered year in the renewal cycle for which the extension is sought;

2. Pays a fee of $250;

3. Has not received a temporary nonhardship extension of time in the prior renewal cycle; and

4. Files proof of compliance with the continuing competency requirements by the following July 1.

(c) A licensee on active military duty shall be granted an exemption from continuing competency requirements as mandated by KRS Chapter 12.

Section 3. Incorporation by Reference. (1) "Extension of Time for Completion of Continued Competency Form", June 2010, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable law, at the Kentucky Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

REBECCA KLUSCH, Executive Director

APPROVED BY AGENCY: June 13, 2011

FILED WITH LRC: June 14, 2011, 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2011, at 9:00 a.m. (EST) at 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled.

This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 1, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Becky Klusch, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, phone (502) 429-7140, fax (502) 429-7142.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Becky Klusch, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation assist in assuring safe and effective practices for the safety and welfare of the public by implementing continued competency.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS Chapter 327.040 (10).

(c) How this administrative regulation conforms to the content of the authorizing statutes: It provides the procedures for continued competency requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides the procedures for renewal requirements for credential holders.

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

(a) How the amendment will change this existing administrative regulation: To add FSBPT approval of courses and to add military exemption as mandated by new KRS 12.

(b) The necessity of the amendment to this administrative regulation. The necessity is to clarify the course approval process for continued competency requirements.

(c) How the amendment conforms to the content of the authorizing statutes: The board is authorized to set standards for licensing and renewal procedures.

(d) How the amendment will assist in the effective administration of the statutes: By clarifying the requirements of continued competency.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 4400.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The credential holders are required to show competency during the biennial renewal period and the amendment clarifies those requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question three: There will be no additional cost to the entities in question three.

(c) As a result of compliance, what benefits will accrue to the entities identified in question three: To add more approval courses

and to allow active duty military easier access to license renewal.

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

(a) Initially: There will be no additional costs to the board.

(b) On a continuing basis: There will be no additional costs to the board.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Costs are minimal for implementing and enforcing this amendment and will be funded by licensure fees paid by licensees.

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

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

(9) TIERING: Is tiering applied? Tiering does not apply in this administrative regulation because the administrative regulation applies equally to all those individuals regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 327.040(10)

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

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

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

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? No new costs 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
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~~] 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) Upon receipt of a patient under an active plan of care from another physical therapy service, the receiving physical therapist shall:

(a) Ensure the evaluation and plan of care are current and appropriate and document this in the medical record; or

(b) Complete an evaluation;

(c) Document the patient transfer of care in the medical record;

(d) Comply with reassessment requirements based on the date of the most recent evaluation.

(4) 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;

(5) [~~(4)~~] Refer the patient to other professionals or services if the treatment or service is beyond the physical therapist's scope of practice;

(6) [~~(5)~~] Be responsible for the physical therapy record of each patient;

(7) [~~(6)~~] Provide services that meet or exceed the generally accepted practice of the profession;

(8) [~~(7)~~] Explain the plan of care to the patient, to others designated by the patient, and to appropriate professionals;

(9) [~~(8)~~] 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;

(10) [~~(9)~~] 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.

(11) [~~(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(4) [~~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 2(3) 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: June 13, 2011

FILED WITH LRC: June 14, 2011, 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2011, at 9:00 a.m. (EST) at 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing five days prior to the hearing, of their intent to attend. If no notification

of intent to attend the hearing is received by that date, the hearing may be cancelled.

This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made.

If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 1, 2011. 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 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: This amendment clarifies the evaluation process of a patient that has been transferred from another facility.

(b) The necessity of the amendment to this administrative regulation: To clarify the evaluation process.

(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 initial evaluation of patients and transfer of patients between providers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 2800 physical 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: 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 questions (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 KRS 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
Kentucky Board of Licensure for Massage Therapy
(Amendment)

201 KAR 42:035. Application process, exam, and curriculum requirements.

RELATES TO: KRS 309.358, 309.359

STATUTORY AUTHORITY: KRS 309.355(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.355(3) requires the board to promulgate administrative regulations to implement KRS 309.350 to 309.364. The board is required to issue a license to an applicant meeting the standards established in KRS 309.358 or 309.359. This administrative regulation establishes the application process and curriculum requirements for licensure.

Section 1. An applicant for licensure as a massage therapist shall:

(1) File a completed, signed, and dated Application for Licensure as a Massage Therapist, and the and required documentation with the board, meeting the requirements set forth in 309.358; and

(2) Pay the application fee as established in 201 KAR 42:020.

Section 2. To comply with KRS 309.358(4), an applicant shall submit to the board, at the time of application, an official transcript or certificate that shows the completion of at least 600 classroom hours, itemizing compliance with the clock hour requirements established in KRS 309.363(1).

Section 3. Examinations. (1) An examination shall be approved by the board as meeting the standard established in KRS

309.358(5) if the board determines that the examination:

(a) Has been scientifically constructed to be valid and objective;

(b) Reflects the curriculum content established in KRS 309.363(1);

(c) Has security procedures to protect the exam content; and

(d) Has clear application, reporting and appeal procedures.

(2) Approval of exams shall be noted in the board minutes and on the board Web-site.

(3) In accordance with KRS 309.358(5), the following examinations shall be considered approved by the board:

(a) The MBLEx or other exam administered by the Federation of State Massage Therapy Boards;

(b) The State of Ohio Massage Therapy Licensing Exam; or

(c) The State of New York Massage Therapy Licensing Exam.

Section 4. Appeals. An applicant may appeal a decision denying his or her licensure application in accordance with KRS 309.362(4).

Section 5. Incorporation by Reference. (1) The "Application for Licensure as a Massage Therapist", 2011[~~2010~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

THERESA CRISLER, Board Chair

APPROVED BY AGENCY: May 16, 2011

FILED WITH LRC: May 19, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2011 at 9:00 a.m. 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 August 1, 2011 at the close of business. 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, PO 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 application procedures for becoming a licensed massage therapist.

(b) The necessity of this administrative regulation: This regulation is necessary to provide appropriate procedures and notice of those procedures to potential licensees.

(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 ensuring that the board has a clear process for the issuance 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: This amendment amends the form to include a notary box.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure validity of identity in submission of applications.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally related to the practice of massage therapy.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will ensure validity of identity in submission of applications.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 2200 licensed massage therapists. The change in this regulation will affect only prospective 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: They will need to have their application notarized.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): None

(5) Provide an estimate of how much it will cost 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:

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(Amendment)

803 KAR 2:304. Exit routes and emergency planning [~~Exit routes, emergency action plans, and fire prevention plans.~~]

RELATES TO: KRS Chapter 338, 29 C.F.R. Part 1910
STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 C.F.R. Part 1910
NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) authorizes the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. [~~KRS 338.061(2) authorizes the board to incorporate by reference established federal standards and national consensus standards.~~] This administrative regulation establishes exit route, emergency action plan, and fire prevention plan standards to be enforced by the Department of Workplace Standards [~~Office of Occupational Safety and Health~~] in general industry.

Section 1. Definitions. (1) "Employee" is defined in KRS 338.015.
(2) "Employer" is defined in KRS 338.015.
(3) "NFPA" means the National Fire Protection Association.
(4) "OSHA" means the Occupational Safety and Health Administration or the Kentucky Department of Labor, Office of Occupational Safety and Health.
(5) "Standard" is defined in KRS 338.015.

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. 1910.33 through 29 C.F.R. 1910.39 and Appendix, revised July 1, 2010, and
(2) The amendments to 29 C.F.R. 1910.33, 1910.34, 1910.35, and 1910.36 as published in the June 8, 2011 Federal Register, Volume 76, Number 110. [~~Section 3. Incorporation by Reference. (1) The revisions to 29 C.F.R. 1910.33 through 29 C.F.R. 1910.39 and Appendix, as published in the November 7, 2002 Federal Register, Volume 67, Number 216, are incorporated by reference.~~
~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Labor, Division of Education and Training, 1047 U.S. Highway 127 South, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.~~
~~(3) This material may also be obtained from the Office of the Federal Register, National Archives and Records Services, General Services Administration.~~]

MARK S. BROWN, Chairman
APPROVED BY AGENCY:
FILED WITH LRC: June 15, 2011 at 10 a.m.
PUBLIC HEARING: A public hearing on this amendment shall be held on July 26, 2011, at 10:30 A.M. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by 4:30 P.M. (ET) July 21, 2011, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 1, 2011.
Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON: Kristi Redmon, CIH, Safety Standards Specialist, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon
(1) Provide a brief summary of:
(a) What this administrative regulation does: This amendment to the administrative regulation, in Section 2, amends 29 C.F.R. 1910.33, 1910.34, 1910.35, and 1910.36 as published in the June 8, 2011 Federal Register, Volume 76, Number 110, which revises 29 C.F.R., Part 1910, Subpart E, "Exit Routes, Emergency Action Plans, and Fire Prevention Plans." The purpose of this revision was to remove and revise individual requirements within the rules that are confusing, outdated, duplicative, or inconsistent and to use clearer language so that the standards are easier to understand by employers, employees, and others who use them. It neither directly increases nor decreases the protection afforded to employees, nor does it increase employers' compliance obligations. The revision reorganized the text, removed inconsistencies among sections, and eliminated duplicative requirements. The standards are performance oriented to the extent possible and more concise than the original, with fewer subparagraphs and fewer cross-references to other standards. Additionally, a table of contents was added that is intended to make the standards easier to use. The name of the subpart was changed from "Exit Routes, Emergency Action Plans, and Fire Prevention Plans" to "Exit Routes and Emergency Planning" to simplify the contents. OSHA deemed that the National Fire Protection Association's Standard 101, Life Safety Code, 2009 Edition (NFPA 101-2009), which is incorporated by reference, provides comparable safety to the Exit Routes standard. Therefore, employers who wish to comply with the NFPA 101-2009 instead of the Subpart E standards may do so. This amendment also offers a clearer definition of the term "occupant load" which may also be found in NFPA 101-2009 as well as in the International Fire Code (IFC) 2009, also incorporated by reference. The design and structure of exit routes should be consistent with those described in the two documents referenced above.
This amendment updates this administrative regulation to meet KRS Chapter 13A considerations. Finally, this amendment, which affects general industry, updates the C.F.R. to July 1, 2010.
(b) The necessity of this administrative regulation: Kentucky's occupational safety and health program is mandated by 29 C.F.R. Part 1953, to be at least as effective as the federal Occupational Safety and Health Administration (OSHA). In order to meet the demands of the June 8, 2011 final rule, and to ensure consistency and provide employers and employees with a clear understanding of the requirements, this amendment is adopted.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: These amendments will enhance worker safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because employers and employees who clearly understand the requirements are more likely to comply with the requirements. In addition, employers may find it easier to comply with the amendment because it is more performance-oriented than the former 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: This amendment to the administrative regulation, in Section 2, amends 29 C.F.R. 1910.33, 1910.34, 1910.35, and

1910.36 as published in the June 8, 2011 Federal Register, Volume 76, Number 110, which revises Title 29 C.F.R., Part 1910, Subpart E, "Exit Routes, Emergency Action Plans, and Fire Prevention Plans." The purpose of this revision was to remove and revise individual requirements within the rules that are confusing, outdated, duplicative, or inconsistent and to use clearer language so that the standards are easier to understand by employers, employees, and others who use them. It neither directly increases nor decreases the protection afforded to employees, nor does it increase employers' compliance obligations. The revision reorganized the text, removed inconsistencies among sections, and eliminated duplicative requirements. The standards are performance oriented to the extent possible and more concise than the original, with fewer subparagraphs and fewer cross-references to other standards. Additionally, a table of contents was added that is intended to make the standards easier to use. The name of the subpart was changed from "Exit Routes, Emergency Action Plans, and Fire Prevention Plans" to "Exit Routes and Emergency Planning" to simplify the contents. OSHA deemed that the National Fire Protection Association's Standard 101, Life Safety Code, 2009 Edition (NFPA 101-2009), which is incorporated by reference, provides comparable safety to the Exit Routes standard. Therefore, employers who wish to comply with the NFPA 101-2009 instead of the Subpart E standards may do so. This amendment also offers a clearer definition of the term "occupant load" which may also be found in NFPA 101-2009 as well as in the International Fire Code (IFC) 2009, also incorporated by reference. The design and structure of exit routes should be consistent with those described in the two documents referenced above.

(b) The necessity of the amendment to this administrative regulation: 29 C.F.R. 1953.23 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the promulgation date of the federal standard. Kentucky's occupational safety and health program is mandated by 29 C.F.R. Part 1953, to be at least as effective as the federal Occupational Safety and Health Administration (OSHA). In order to meet the demands of the June 8, 2011 final rule, and to ensure consistency and provide employers and employees with a clear understanding of the requirements, this amendment is adopted.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will enhance worker safety throughout Kentucky. Improved employee protection is likely to result from promulgation of this amendment because employers and employees who clearly understand the requirements are more likely to comply with the requirements. In addition, employers may find it easier to comply with the amendment because it is more performance-oriented than the former regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: These amendments affect all private and public sector employers in the Commonwealth engaged in general industry activities covered by KRS Chapter 338.

(4) Provide an assessment of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment, including: (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: the name of the subpart of the particular standard will be changed to "Exit Routes and Emergency Planning." Also, NFPA Standards are adopted by reference and will serve as OSHA standards.

(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 costs expected with this amendment to the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):
Improved employees protection is likely to result from the promulgation of this amendment due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

Improved employee protection is likely to result from promulgation of this amendment because employers and employees who clearly understand the requirements are more likely to comply with the requirements. In addition, employers may find it easier to comply with the amendment because it is more performance-oriented than the former regulation. This change will have little anticipated impact in Kentucky. The amendment applies to general industry.

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

(a) Initially: There will be no initial cost to implement this administrative regulation. This amendment imposes no additional costs on any private or public sector entity. Certain provisions of this amendment add flexibility and may even reduce costs for employers.

(b) On a continuing basis: There will be no additional costs on any private or public sector entity to implement this regulation on a continuing basis. Certain provisions of this amendment add flexibility and may even reduce costs for employers.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor a need for increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. Kentucky's Occupational Safety and Health Program regulations affect all employers with one (1) or more employees. Inspections are conducted at facilities that pose higher risks to worker safety and health or at sites where the Kentucky Occupational Safety and Health Program has received referrals, worker complaints, or where a workplace fatality or an accident resulting in the hospitalization of three (3) or more employees has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18(c)(2).

2. State compliance standards. This amendment incorporates revisions published in the June 8, 2011 Federal Register to federal regulations addressing exit routes and emergency planning. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and updates the C.F.R. to July 1, 2010.

3. Minimum or uniform standards contained in the federal mandate. This amendment, in Section 3, incorporates revisions published in the June 8, 2011 Federal Register, Volume 76, Number 110, which revises 29 C.F.R. Part 1910, Subpart E, "Exit Routes, Emergency Action Plans, and Fire Prevention Plans" and changes the name of the subpart to "Exit Routes and Emergency Planning." This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations. This amendment updates the C.F.R. to July 1, 2010.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards. It neither directly increases nor decreases the protection afforded to employees, nor does it increase employers' compliance obligations. Certain provisions of this amendment add flexibility and may even reduce costs for employers. Employers may find it easier to comply with the amendment because it is more performance-oriented than the former regulation.

5. Justification for the imposition of the stricter standard, or

additional or different responsibilities or requirements.

The revisions impose no stricter, additional, or different responsibilities than the federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part, or division of local government this administrative regulation will affect. The amendment affects any unit, part, or division of local government employees engaged in general industry work.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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

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

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

(c) How much will it cost to administer this program for the first year? There are no costs expected from the amendment to the administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There are no costs expected from the amendment to this administrative regulation.

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

Revenues (+/-): n/a

Expenditures (+/-): n/a

Other explanation: Local governments may find it easier to comply with this amendment because it is more performance-oriented than the former regulation. This amendment imposes no additional costs on any public sector entity. Certain provisions of the amendment add flexibility and may even reduce costs for public sector employers. This amendment replaces the former standards regulating means of egress, emergency action plans, and fire prevention plans. It neither directly increases nor decreases the protection afforded to employees, nor does it increase employers' compliance obligations. This amendment will not affect the number of local government employees.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(Amendment)

803 KAR 2:308. Personal protective equipment.

RELATES TO: 29 C.F.R. 1910.132-1910.138

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to adopt occupational safety and health administrative regulations. 29 C.F.R. 1910.132 to 1910.138 and Appendices establish the federal requirements relating to personal protective equipment. This administrative regulation establishes personal protective equipment standards to be enforced by the Department of Workplace Standards in general industry.

Section 1. Definitions. (1) "C.F.R." means Code of Federal Regulations.

(2) "Employee" is defined in KRS 338.015(2).

(3) "Employer" is defined in KRS 338.015(1).

(4) "Established federal standard" is defined in KRS 338.015(10).

(5) "National consensus standard" is defined in KRS 338.015(9).

(6) "Standard" is defined in KRS 338.015(3).

(7) "U.S. Department of Labor" means Kentucky Labor Cabinet or U.S. Department of Labor.

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, general industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Administration:

(1) 29 C.F.R. 1910.132 through 29 C.F.R. 1910.138, and Appendices, revised July 1, 2010; [~~2009;~~] and

(2) The amendments to 29 C.F.R.1910.132 and 1910.134 as published in the June 8, 2011 Federal Register, Volume 76, Number 110. [~~The amendment to 29 C.F.R. 1910.133, 1910.135, and 1910.136 as published in the September 9, 2009 Federal Register, Volume 74, Number 173.~~]

MARK S. BROWN, Chairman

APPROVED BY AGENCY: June 13, 2011

FILED WITH LRC: June 15, 2011 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 26, 2010 at 10:30 A.M. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 1, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1910. Section 2 also updates the C.F.R. to July 2010 and establishes the amendments to 29 C.F.R. 1910.134 published in the June 8, 2011 Federal Register, Volume 76, Number 110. As a result of the final rule published in the June 8, 2011 Federal Register, 803 KAR 2:308 must be amended to include the adopted changes.

With this final rule, OSHA is removing or revising requirements within the regulations that are confusing, outdated, duplicative, or inconsistent. In this specific KAR, the amendment deletes the requirement to maintain written training certification records. OSHA does not believe that the records provide a safety and health benefit.

There are also several revisions to the Respiratory Protection standard clarifying the use of breathing gas containers and references to DOT regulations. Additionally, the final rule amends this regulation by deleting duplicative and inconsistent statements related to the mandatory Appendix D.

Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and

1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the June 8, 2011 publication date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by December 8, 2011.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program.

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

(a) How the amendment will change this existing administrative regulation: Section 2 of the regulation updates the C.F.R. to July 2010 and establishes the amendments to 29 C.F.R. 1910.132 and 1910.134 published in the June 8, 2011 Federal Register, Volume 76, Number 110. With this final rule, OSHA is removing or revising requirements within the regulations that are confusing, outdated, duplicative, or inconsistent. In this specific KAR, the amendment deletes the requirement to maintain written training certification records. OSHA does not believe that the records provide a safety and health benefit.

There are also several revisions to the Respiratory Protection standard clarifying the use of breathing gas containers and references to DOT regulations. Additionally, the final rule amends this regulation by deleting duplicative and inconsistent statements related to the mandatory Appendix D.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the June 8, 2011 publication date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by December 8, 2011.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all public sector employers in the Commonwealth engaged in general industry activities covered by KRS Chapter 338.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulations affected in this specific KAR include the removal of a requirement to document certification of training on personal protective equipment and the amendment of references to other regulations that no longer exist as well as amendments to existing regulations in order to clarify OSHA requirements related to respirators. Employers are not expected to have any new obligations from the changes to this KAR.

(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 costs expected with this amendment to the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employees protection is likely to result from the promulgation of this amendment due to the consistency with the federal requirement, providing all a clear understanding of the requirements. Annual cost savings of 45 million are expected from all changes published in the final rule across all affected employers.

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

(a) Initially: There will be no cost to implement this amendment.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this amendment to the administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the June 8, 2011 confirmation of the publication date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by December 8, 2011.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the June 8, 2011 confirmation of the publication date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by December 8, 2011.

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

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

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in general industry activities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84

STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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

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

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

(c) How much will it cost to administer this program for the first year? There are no costs expected from the amendment to the administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There are no costs expected from the amendment to this administrative regulation.

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

Revenues (+/-): n/a

Expenditures (+/-): n/a

Other explanation: Annual cost savings of 45 million are expected from all changes published in the final rule for all affected employers.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health
Education and Training
(Amendment)

803 KAR 2:309. General environmental controls.

RELATES TO: KRS 338.051(3), 338.061, 29 C.F.R. 1910.141 -1910.147

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations necessary to accomplish the purposes of KRS Chapter 338. 29 C.F.R. 1910.141 to 1910.147 establishes the federal requirements relating to general environmental controls. [~~EO 2008-472, effective June 16, 2008, established the Labor Cabinet and assigned to it all organizational entities associated with the former Department of Labor.~~] This administrative regulation establishes the general environmental controls standards to be enforced by the Department of Workplace Standards in general industry.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner Department of Workplace Standards, Labor Cabinet.

(3) "C.F.R." means Code of Federal Regulations.

(4) "Employee" is defined in KRS 338.015(2).

(5) "Employer" is defined in KRS 338.015(1).

(6) "Established federal standard" is defined in KRS 338.015(10).

(7) "National consensus standard" is defined in KRS 338.015(9).

(8) "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(9) "Standard" is defined in 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 and the requirements 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 Records Services, General Services Administration:

(1) 29 C.F.R. 1910.141-1910.147, revised July 1, 2010; [~~2008.~~]

(2) The amendments to 29 C.F.R. 1910.145 and 1910.147 published in the May 2, 2011, Federal Register, Volume 76, Number 84; and

(3) The amendments to 1910.141 published in the June 8, 2011, Federal Register, Volume 76, Number 110.

Section 3. (1)(a) Construction of Water Closets. The requirements relating to construction of water closets in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1910.141(c)(2)(i).

(b) Each water closet shall occupy a separate compartment with walls or partitions between fixtures sufficiently high to assure privacy.

(2)(a) Lockout. The requirements relating to the utilization of lockout procedures in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1910.147(c)(2)(ii).

(b) If an energy isolating device is capable of being locked out, the employer's energy control program under 29 C.F.R. 1910.147(c)(1) shall utilize lockout.

(3)(a) Full employee protection. The requirements relating to tag location in subsection (b) of this section shall apply in lieu of 29 C.F.R. 1910.147(c)(3)(i).

(b) When a tagout device is used on an energy isolating device which is incapable of being locked out, the tagout device shall be attached at the same location that the lockout device would have been attached, and the employer shall demonstrate that the tagout program will provide a level of safety equivalent to that obtained by using a lockout program. If tagout devices are used with energy isolating devices designed with the incapability of being locked, the tag attachment shall be fastened at the same point at which the lock would have been attached.

MARK S. BROWN, Chairman

APPROVED BY AGENCY: June 13, 2011

FILED WITH LRC: June 15, 2011 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 26, 2010 at 10:30 A.M. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 1, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone: (502) 564-3504, fax: (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1910. Section 2 also updates the C.F.R. to July 2010 and establishes the amendments to 29 C.F.R. 1910.145 and 1910.147 published in the May 2, 2011 Federal Register, Volume 76, Number 84 and the amendments to 29 C.F.R. 1910.141 published in the June 8, 2011, Federal Register, Volume 76, Number 110. As a result of the adoption of the final rule published in the May 2, 2011 Federal Register, and the publication of the June 8, 2011 final rule, 803 KAR 2:309 must be amended to include the

adopted changes. Section 3 of this regulation carries requirements that are stricter than those required by OSHA. This section places requirements on employers related to the construction of water closets and the utilization of lockout/tagout procedures. These requirements have been in effect since December 15, 1989. OSHA adopted many of the provisions in subpart F in 1972 from existing Federal occupational safety and health standards and national consensus standards (for example, sanitation, medical services and first aid, housekeeping). Since then, those national consensus standards have been updated and revised. OSHA carefully reviewed the updated standards and, when they encompassed new technology and requirements to provide greater workplace safety and health, has incorporated those changes in the final rule. With the May 2, 2011 final rule, OSHA is revising the requirements related to general working conditions in shipyard employment. Most of the revisions involve updates to existing requirements, however several provisions provide for protections from hazards not currently addressed by existing standards, which includes the control of hazardous energy. The specific provision amended in this KAR amends the application of two general industry requirements to maritime employment. With the June 8, 2011 final rule, OSHA is removing or revising requirements within the regulations that are confusing, outdated, duplicative, or inconsistent. The requirements affected in this specific KAR include the revision of the definition of potable water to meet the EPA's requirements and the clarification that air dryers do not require "hot" air. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the May 2, 2011 and June 8, 2011 publication dates of the final rules. Kentucky does not have an effective alternative to the final rules. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by November 2, 2011and December 8, 2011 respectively. The amendment to 803 KAR 2:309, related to the May 2, 2011 Federal Register, was adopted by the Kentucky OSH Standards Board on May 10, 2011.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program.

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

(a) How the amendment will change this existing administrative regulation: Section 2 of the regulation updates the C.F.R. to July 2010 and establishes the amendments to 29 C.F.R. 1910.145 and 1910.147 published in the May 2, 2011 Federal Register, Volume 76, Number 84. The amendments to the regulation specify how the aforementioned general industry regulations apply to the maritime industry. Section 2 also establishes the amendments to 29 C.F.R. 1910.141 published in the June 8, 2011, Federal Register, Volume 76, Number 110. The amendments from this final rule clarify the requirements for potable water and air blower for the purposes of sanitation. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the May 2, 2011 and June 8, 2011 publication dates of the final rules. Kentucky does not have an effective alternative to the final rules. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirement by November 2, 2011and December 8, 2011 respectively. The amendment to 803 KAR 2:309, published in the May 2, 2011 Federal Register was adopted by the Kentucky OSH Standards Board on May 10, 2011.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in general industry activities covered by KRS Chapter 338.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment specifies that general industry requirements under 1910.145 apply to the maritime industry while general industry requirements under 1910.147 do not apply to the maritime industry. It also revises the 1910.141 requirements related potable water and air blowers for sanitation purposes. No additional compliance duties are expected from the revisions to 1910.141

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): OSHA provides that the May 2, 2011 final rule will not significantly economically impact these entities. The specific amendment to this regulation is not expected to create any additional costs to the entities. OSHA expects that implementation of the requirements in the entire May 2, 2011 final rule will cost approximately four million dollars annually for the entire industry. Compliance costs specific to this state were not available. There are no expected costs associated with the June 8, 2011.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):
Improved employee protection is likely to result from the promulgation of this amendment due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

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

(a) Initially: There will be no cost to implement this amendment.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this amendment to the administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.
Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as ef-

fective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the May 2, 2011 and June 8, 2011 publication dates of the final rules. Kentucky does not have an effective alternative to the final rules. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirement by November 2, 2011and December 8, 2011 respectively. The amendment to 803 KAR 2:309, published in the May 2, 2011 Federal Register was adopted by the Kentucky OSH Standards Board on May 10, 2011.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the May 2, 2011 and June 8, 2011 publication dates of the final rules. Kentucky does not have an effective alternative to the final rules. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirement by November 2, 2011and December 8, 2011 respectively. The amendment to 803 KAR 2:309, published in the May 2, 2011 Federal Register was adopted by the Kentucky OSH Standards Board on May 10, 2011.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes, Section 3 of this administrative regulation imposes stricter requirement than those required by the federal mandate. This section places requirements on employers related to the construction of water closets and the utilization of lockout/tagout procedures. These requirements have been in effect since December 15, 1989. The amendments to the regulation does not impose stricter requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Section 3(1)(a) and (b) of this administrative regulation differs from the federal requirement only insofar as to not require that water closets be equipped with a door. Section 3(2)(a) and (b) of this administrative regulation differ from the federal requirement such that if an energy isolating device is capable of being locked out, then the employer's energy control program shall utilize lockout, whereas the federal requirement allows the use of either the lockout or tagout method. Section 3(3)(a) and (b) of this administrative regulation differ from the federal requirement such that a tagout device may be used on an energy isolating device only if the device is incapable of being locked out, whereas the federal requirement allows the use of either the lockout or tagout method. These provisions provide for greater employee protections, and have been in place since December 15, 1989.

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 will affect any unit, part, or division of local government covered by KRS 338 and engaged in general industry activities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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

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

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

(c) How much will it cost to administer this program for the first year? OSHA estimates that the implementation of the requirements in the entire May 2, 2011 final rule will increase annual costs by approximately four million dollars for the entire maritime industry. OSHA has determined that the rule will not involve large initial investments. No information was available specific to this state. There are no costs associated with the amendments created by the June 8, 2011 final rule.

(d) How much will it cost to administer this program for subsequent years? OSHA estimates that the implementation of the requirements in the entire May 2, 2011 final rule will increase annual costs by approximately four million dollars for the entire maritime industry. No information was available specific to this state. There are no costs associated with the amendments created by the June 8, 2011 final rule.

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: OSHA provides that the May 2, 2011 final rule will increase compliance costs by 4 million dollars to employers in the maritime industry. No information was available specific to this state. Annual cost savings of 45 million are expected from all changes published in the June 8, 2011final rule covering all affected employers.

LABOR CABINET
Depart of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(Amendment)

803 KAR 2:313. Materials handling and storage.

RELATES TO: KRS 338.051(3), 338.061, 29 C.F.R. 1910

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 C.F.R. 1910

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. [~~KRS 338.061(2) provides that the board may incorporate by reference established federal standards and national consensus standards.~~] The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry.

Section 1. Definitions Applicable to this Part. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(3) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule".

(4) "U.S. Department of Labor" means the Kentucky Department of Labor or the U.S. Department of Labor.

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, general industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Administration:

(1) 29 C.F.R. 1910.176 through 1910.178(m)(11) and 1910.178(m)(13) through 1910.184, revised July 1, 2010;

(2) The amendment to 29 C.F.R. 1910.177 as published in the May 2, 2011 Federal Register, Volume 76, Number 84; and

(3) The amendment to 29 C.F.R. 1910.184 as published in the June 8, 2011 Federal Register, Volume 76, Number 110.

Section 3. (1) The language in paragraphs (a), (b), and (c) of

this subsection shall apply in lieu of 29 C.F.R. 1910.178(m)(12).

(a) Use of a safety platform firmly secured to the lifting carriage and/or forks.

(b)Means shall be provided whereby personnel on the platform can shut off power to the truck.

(c) Such protection from falling objects as indicated necessary by the operating conditions shall be provided.[~~Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) 29 C.F.R.1910.176-.190, Subpart N, "Materials Handling and Storage", revised as of July 1, 1998, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.~~

~~(b) The revision to the revision to 29 C.F.R. 1910.178, "Powered Industrial Trucks", as published in the Federal Register, Volume 63, Number 230, December 1, 1998, is incorporated by reference.~~

~~(c) The revision to 29 C.F.R. 1910.178, "Powered Industrial Trucks", as published in the Federal Register, Volume 64, Number 80, April 27, 1999, is incorporated by reference.~~

~~(2) This material may be inspected, obtained, and copied at: Kentucky Department of Labor, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8:00 a.m. - 4:30 p.m. (ET), Monday through Friday. (16 Ky.R. 695; eff. 12-15-89; Am. 17 Ky.R. 1849; eff. 1-6-91; 20 Ky.R. 2697; eff. 5-11-94; 23 Ky.R. 1714; eff. 12-13-96; 25 Ky.R. 2448; eff. 6-16-99; 26 Ky.R. 652; 1008; eff. 11-15-99; TAm eff. 8-9-2007.)~~]

MARK S. BROWN, Chairman

APPROVED BY AGENCY: June 13, 2011

FILED WITH LRC: June 15, 2011 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this amendment shall be held on July 26, 2011, at 10:30 A.M. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by 4:30 P.M. (ET) July 21, 2011, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 1, 2011. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kristi Redmon, CIH Safety Standards Specialist, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon

(1) Provide a brief summary of:

(a) What this administrative regulation does: This amendment to the administrative regulation, in Section 2, amends (1) 29 C.F.R. 1910.176 through 1910.178(m)(11) and 1910.178(m)(13) through 1910.184, revised July 1, 2010. This also established a state-specific regulation concerning the use of a safety platform firmly secured to the lifting carriage and/or forks of a powered industrial truck. Means shall also be provided whereby personnel on the platform can shut off power to the truck. Protection from falling objects as indicated necessary by the operating conditions shall be provided. The amendment to 29 C.F.R. 1910.177 as published in the May 2, 2011 Federal Register, Volume 76, Number 84, states that this section does not apply to employers and places of employment regulated under the Longshoring Standards, 29 C.F.R. part 1918; Construction Safety Standards 29 C.F.R. 1926, or Agriculture Standards, 29 C.F.R. part 1928. The amendment to 29 C.F.R. 1910.184 as published in the June 8, 2011 Federal Register, Volume 76, Number 110, pertains to rigging equipment for material handling. The changes include: ensuring that the rigging equipment (slings and rope, both metal and synthetic) has legible identification markings by the manufacturer that indicate the recommended safe working load. The same requirement applies to shackles as well as ropes and slings. The purpose of these revisions was to remove and revise individual requirements within the rules that are confusing, outdated, duplicative, or inconsistent and to use clearer language so that the standards are easier to understand by employers, employees, and others who use them. It neither directly increases nor decreases the protection afforded to employees, nor does it increase employers' compliance obligations. The revision reorganized the text, removed inconsistencies among sections, and eliminated duplicative requirements. The standards are performance oriented to the extent possible and more concise than the original, with fewer subparagraphs and fewer cross-references to other standards. This amendment updates this administrative regulation to meet KRS Chapter 13A considerations. Finally, this amendment, which affects general industry, updates the C.F.R. to July 1, 2010.

(b) The necessity of this administrative regulation: Kentucky's occupational safety and health program is mandated by 29 C.F.R. Part 1953, to be at least as effective as the federal Occupational Safety and Health Administration (OSHA). In order to meet the demands of the June 8, 2011 final rule, and the May 2, 2011 final rule, as well as ensure consistency and provide employers and employees with a clear understanding of the requirements, this amendment is adopted.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: These amendments will enhance worker safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because employers and employees who clearly understand the requirements are more likely to comply with the requirements. In addition, employers may find it easier to comply with the amendment because it is more performance-oriented than the former 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: This amendment to the administrative regulation, in Section 2, amends (1) 29 C.F.R. 1910.176 through 1910.178(m)(11) and 1910.178(m)(13) through 1910.184, revised July 1, 2010. This also established a state-specific regulation concerning the use of a safety platform firmly secured to the lifting carriage and/or forks of a powered industrial truck. Means shall also be provided whereby personnel on the platform can shut off power to the truck. Protection from falling objects as indicated necessary by the operating conditions shall be provided. The amendment to 29 C.F.R. 1910.177 as published in the May 2, 2011 Federal Register, Volume 76, Number 84, states that this section, servicing multi-piece rims, does not apply to employers and places of employment regulated under the Longshoring Standards, 29 C.F.R. part 1918; Construction Safety Standards 29 C.F.R. 1926, or Agriculture Standards, 29 C.F.R. part 1928. The amendment to 29 C.F.R. 1910.184 as published in the June 8, 2011 Federal Register, Volume 76, Number 110, pertains to rigging equipment for material handling. The changes include: ensuring that the rigging equipment (slings and rope, both metal and synthetic) has legible identification markings by the manufacturer that indicate the recommended safe working load. The same requirement applies to shackles as well as ropes and slings. The purpose of these revisions was to remove and revise individual requirements within the rules that are confusing, outdated, duplicative, or inconsistent and to use clearer language so that the standards are easier to understand by employers, employees, and others who use them. It neither directly increases nor decreases the protection afforded to employees, nor does it increase employers' compliance obligations. The revision reorganized the text, removed inconsistencies among sections, and eliminated duplica-

tive requirements. The standards are performance oriented to the extent possible and more concise than the original, with fewer subparagraphs and fewer cross-references to other standards.

(b) The necessity of the amendment to this administrative regulation: 29 C.F.R. 1953.23 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the promulgation date of the federal standard. Kentucky's occupational safety and health program is mandated by 29 C.F.R. Part 1953, to be at least as effective as the federal Occupational Safety and Health Administration (OSHA). In order to meet the demands of the June 8 and May 2, 2011 final rules, and to ensure consistency and provide employers and employees with a clear understanding of the requirements, this amendment is adopted.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will enhance worker safety throughout Kentucky. Improved employee protection is likely to result from promulgation of this amendment because employers and employees who clearly understand the requirements are more likely to comply with the requirements. In addition, employers may find it easier to comply with the amendment because it is more performance-oriented than the former regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: These amendments affect all private and public sector employers in the Commonwealth engaged in general industry activities covered by KRS Chapter 338.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulation affects the entities by requiring that the manufacturer's specifications for ropes and slings be followed instead of the tables in the standard that had been referenced. Employers are not expected to have any new obligations from the changes to this KAR.

(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 costs expected with this amendment to the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):
Improved employees protection is likely to result from the promulgation of this amendment due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

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

(a) Initially: There will be no initial cost to implement this administrative regulation. This amendment imposes no additional costs on any private or public sector entity. Certain provisions of this amendment add flexibility and may even reduce costs for employers.

(b) On a continuing basis: There will be no additional costs on any private or public sector entity to implement this regulation on a continuing basis. Certain provisions of this amendment add flexibility and may even reduce costs for employers.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor a need for increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. Kentucky's Occupational Safety and Health Program regulations affect all employers with one (1) or more employees. Inspections are conducted at facilities that pose higher risks to worker safety and health or at sites where the Kentucky Occupational Safety and Health Program has received referrals, worker complaints, or where a workplace fatality or an accident resulting in the hospitalization of three (3) or more employees has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18(c)(2).

2. State compliance standards. This amendment incorporates revisions, published in the June 8, 2011 Federal Register and the May 2, 2011 Federal Register, to federal regulations addressing requirements for ropes and slings in material handling, and the servicing of multi-piece rims. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and updates the C.F.R. to July 1, 2010.

3. Minimum or uniform standards contained in the federal mandate. This amendment, in Section 2, incorporates revisions published in the June 8, 2011 Federal Register, Volume 76, Number 110, Section 2, and amends (1) 29 C.F.R. 1910.176 through 1910.178(m)(11) and 1910.178(m)(13) through 1910.184, revised July 1, 2010. This also established a state-specific regulation concerning the use of a safety platform firmly secured to the lifting carriage and/or forks of a powered industrial truck. The amendment to 29 C.F.R. 1910.177 as published in the May 2, 2011 Federal Register, Volume 76, Number 84, states that this section which applies to the servicing of multi-piece rims, does not apply to employers and places of employment regulated under the Longshoring Standards, 29 C.F.R. part 1918; Construction Safety Standards 29 C.F.R. 1926, or Agriculture Standards, 29 C.F.R. part 1928. The amendment to 29 C.F.R. 1910.184 as published in the June 8, 2011 Federal Register, Volume 76, Number 110, pertains to rigging equipment for material handling. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations. This amendment updates the C.F.R. to July 1, 2010.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards. It neither directly increases nor decreases the protection afforded to employees, nor does it increase employers' compliance obligations. Certain provisions of this amendment add flexibility and may even reduce costs for employers. Employers may find it easier to comply with the amendment because it is more performance-oriented than the former regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The revisions impose no stricter, additional, or different responsibilities than the federal standards.

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 will affect any unit, part, or division of local government which is covered by KRS 338 and engaged in construction industry activities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation? KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

4. Estimate the effect of this administrative regulation on the

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

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

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

(c) How much will it cost to administer this program for the first year? This amendment will not impose any cost. This amendment changes language in the regulation clarifying the requirements of employers as it relates to the provision of personal protective equipment and training

(d) How much will it cost to administer this program for subsequent years? This amendment will not impose any subsequent cost. This amendment changes language in the regulation clarifying the requirements of employers.

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

Revenues (+/-): There will be no increase or decrease in local government revenues as a result of this amendment.

Expenditures (+/-): There will be no increase or decrease in local government expenditures as a result of this amendment.

Other explanation: non-applicable

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(Amendment)

803 KAR 2:319. Commercial diving operations.

RELATES TO: KRS Chapter 338, 29 C.F.R. Part 1910.401-1910.440

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations necessary to accomplish the purposes of KRS Chapter 338. This administrative regulation establishes commercial diving operations standards to be enforced by the Office of Occupational Safety and Health in the area of general industry.

Section 1. Definitions. (1) "Assistant Secretary of Labor" means the Commissioner of the Department of Labor, Commonwealth of Kentucky.

(2) "Employee" is defined in KRS 338.015(2).

(3) "Employer" is defined in KRS 338.015(1).

(4) "Standard" is defined in KRS 338.015(3).

Section 2. Except as modified by the definitions in Section 1 and the requirements in Section 3 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. 1910.401-1910.440, and Appendices, revised July 1, 2010; and

(2) The amendments to 29 C.F.R. 1910.440 as published in the June 8, 2011, Federal Register, Volume 76, Number 110. [~~General industry shall comply with the requirements of 29 C.F.R. 1910.401 through 1910.440, and Appendices, revised as of July 1, 2006, as amended by the definitions in Section 1 and requirements of Section 3 of this administrative regulation.~~]

Section 3. Reporting Requirement. An employer required by this administrative regulation to report information to the United States Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Labor Cabinet, [~~Department of Labor,~~] U.S. Highway 127 South, Suite 4, Frankfort, Kentucky 40601.

As approved by the Kentucky Occupational Safety and Health Standards Board.

MARK S. BROWN, Chairman

APPROVED BY AGENCY: June 13, 2011

FILED WITH LRC: June 15, 2011 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 26, 2010 at 10:30 A.M. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 1, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone: (502) 564-3504, fax: (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1910. Section 2 also updates the C.F.R. to July 2010 and establishes the amendments to 29 C.F.R. 1910.440 published in the June 8, 2011 Federal Register, Volume 76, Number 110. Section 3 requires employers to report to the Kentucky Labor Cabinet any reports required by this regulation instead of reporting to the United States Department of Labor. As a result of the final rule published in the June 8, 2011, Federal Register, 803 KAR 2:319 must be amended to include the adopted changes. With this final rule, OSHA is removing or revising requirements within the regulations that are confusing, outdated, duplicative, or inconsistent. The change specific to this KAR removes and replaces an outdated recordkeeping reference and removes confusing language regarding medical records. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the June 8, 2011 publication date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by December 8, 2011.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program.

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

(a) How the amendment will change this existing administrative regulation: Section 2 requires employers to comply with the requirements of 29 C.F.R. 1910. Section 2 also updates the C.F.R. to

July 2010 and establishes the amendments to 29 C.F.R. 1910.440 published in the June 8, 2011 Federal Register, Volume 76, Number 110. As a result of the final rule published in the June 8, 2011, Federal Register, 803 KAR 2:319 must be amended to include the adopted changes. With this final rule, OSHA is removing or revising requirements within the regulations that are confusing, outdated, duplicative, or inconsistent. The change specific to this KAR removes and replaces an outdated recordkeeping reference and removes confusing language regarding medical records.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the June 8, 2011 publication date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by December 8, 2011.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all public sector employers in the Commonwealth engaged in general industry activities covered by KRS Chapter 338.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this specific KAR removes an reference to an outdated standard and replaces with the correct standard. The amendment also removes confusing language related to medical records. Employers are not expected to have any new obligations from the changes to this KAR.

(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 costs expected with this amendment to the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):
Improved employees protection is likely to result from the promulgation of this amendment due to the consistency with the federal requirement, providing all a clear understanding of the requirements. Annual cost savings of 45 million are expected from all changes published in the final rule for across all affected employers.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: (a) Initially: There will be no cost to implement this amendment.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this amendment to the administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.
Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the June 8, 2011 confirmation of the publication date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by December 8, 2011.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the June 8, 2011 confirmation of the publication date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by December 8, 2011.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation does impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The requirement to report to the Kentucky Labor Cabinet instead of the U.S. DOL is different than the federal requirements. This is justified to ensure the Kentucky OSH program receives the required notification in a timely manner. This requirement has been in effect since May 26, 2005.

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 will affect any unit, part, or division of local government covered by KRS 338 and engaged in general industry activities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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

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

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

(c) How much will it cost to administer this program for the first year? There are no costs expected from the amendment to the administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There are no costs expected from the amendment to this administrative regulation.

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

Revenues (+/-): n/a
Expenditures (+/-): n/a
Other explanation: Annual cost savings of 45 million are expected from all changes published in the final rule for all affected employers. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(Amendment)

803 KAR 2:320. Toxic and hazardous substances.

RELATES TO: KRS 338.015, 338.031, 29 C.F.R. 1910.134, 1910.141, 1910.1000-1910.[-]1450
STATUTORY AUTHORITY: KRS 338.051(3), 338.061
NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to 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. 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.
(15) "Isolated system" means a fully enclosed structure, other than the vessel of containment, of 4,4'-Methylene bis (2-chloroaniline), which is impervious to the passage of entry of 4,4'-Methylene bis (2-chloroaniline), and which would prevent the entry of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, or the external environment, if leakage or spillage from the vessel of containment occurs.
(16) "Laboratory type hood" means a device:
(a) Enclosed on three (3) sides with the top and bottom designed and maintained to draw air inward at an average linear face velocity of 150 feet per minute with a minimum of 125 feet per minute; and
(b) Designed, constructed, and maintained so that an operation involving 4,4'-Methylene bis (2-chloroaniline) within the hood does not require the insertion of any portion of an employee's body other than hands and arms.
(17) "National consensus standard" is defined by KRS 338.015(9).
(18) "Nonregulated area" means any area under the control of the employer where entry and exit is neither restricted nor controlled.
(19) "Open-vessel system" means an operation involving 4,4'-Methylene bis (2-chloroaniline) in an open vessel, which is not in an isolated system, a laboratory type hood, nor in any other system affording equivalent protection against the entry of 4,4'Methylene bis (2-chloroaniline) into regulated areas, nonregulated areas, or the external environment.
(20) "Protective clothing" means clothing designed to protect an employee against contact with or exposure to 4,4'-Methylene bis (2-chloroaniline).
(21) "Regulated area" means an area where entry and exit is restricted and controlled.
(22) "Standard" means "occupational safety and health standards" as defined by KRS 338.015(3).

Section 2. 4,4'-Methylene bis (2-Chloroaniline). (1) Scope and application.
(a) This section shall apply to any area in which 4,4'-Methylene bis (2-chloroaniline), Chemical Abstracts Service Registry Number 101144, is manufactured, processed, repackaged, released, handled, or stored. This section shall not apply to transshipment 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 de-

contaminated.

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;

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 para-

graph.

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; 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, 2010 [~~2009~~]; and

(2) The amendments to Subpart Z of 29 C.F.R. 1910 published in the June 8, 2011, Federal Register, Volume 76, Number 110. [~~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.~~]

MARK S. BROWN, Chairman

APPROVED BY AGENCY: June 13, 2011

FILED WITH LRC: June 15, 2011 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 26, 2010 at 10:30 A.M. at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 1, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax(502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 of this administrative regulation carries requirements which are stricter than those required by OSHA. This section places requirements on employers related to the use of 4,4'-Methylene bis (2-Chloroaniline), which the federal regulation does not. This provision has been in place since February 12, 1996. Section 3 of this administrative regulation carries requirements which are stricter than those required by OSHA. This section places requirements associated with research and quality control laboratory activities involving the use of the chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016. This provision has been in place since February 12, 1996. Section 4 of this administrative regulation carries requirements which are stricter than those required by OSHA. This section places requirements related to access to exposure or medical records. This provision has been in place since July 17, 1997. Section 5 of this administrative regulation carries requirements which are stricter than those required by OSHA. This section places requirements related to glove use as it applies to 29 C.F.R. 1910.1030. This provision has been in place since October 7, 1992. Section 6 requires employers in general industry to comply with the requirements of 29 C.F.R. 1910. Section 6 also updates the C.F.R. to July 1, 2010 and establishes the amendments to Subpart Z of 29 C.F.R. 1910 published in the June 8, 2011, Federal Register, Volume76, Number 110. As a result of the publication of this final rule, 803 KAR 2:320 must be amended to include the changes. With this final rule, OSHA is removing or revising requirements within the regulations that are confusing, outdated, duplicative, or inconsistent. In this specific KAR, the amendment deletes the requirement to maintain written personal protective equipment training certificates for the cadmium standard. OSHA does not believe that the records provide a safety and health benefit. The final rule also clarifies the use of respirators when handling certain carcinogens and clarifies the application of several expanded chemical standards when employees are exposed at or above the action level or permissible exposure limit. The requirements to transfer records to NIOSH are removed in several expanded chemical standards by this final rule and changes regarding first aid for ingestion of chemicals are made in the non-mandatory appendix of the laboratory standard. While the changes to Subpart Z are numerous, none are substantial and according to OSHA they do not create any additional compliance duties for employers. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the June 8, 2011 publication date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by December 8, 2011.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program.

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

(a) How the amendment will change this existing administrative regulation: Section 6 requires employers in general industry to comply with the requirements of 29 C.F.R. 1910. Section 6 also updates the C.F.R. to July 1, 2010 and establishes the amendments to Subpart Z of 29 C.F.R. 1910 published in the June 8, 2011, Federal Register, Volume76, Number 110. As a result of the publication of this final rule, 803 KAR 2:320 must be amended to include the changes. With this final rule, OSHA is removing or revising requirements within the regulations that are confusing, outdated, duplicative, or inconsistent. In this specific KAR, the amendment deletes the requirement to maintain written personal protective equipment training certificates for the cadmium standard. OSHA does not believe that the records provide a safety and health benefit. The final rule also clarifies the use of respirators when handling certain carcinogens and clarifies the application of several expanded chemical standards when employees are exposed at or above the action level or permissible exposure limit. The requirements to transfer records to NIOSH are removed in several expanded chemical standards by this final rule and changes regarding first aid for ingestion of chemicals are made in the non-mandatory appendix of the laboratory standard. While the changes to Subpart Z are numerous, none are substantial and according to OSHA they do not create any additional compliance duties for employers.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the June 8, 2011 publication date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by December 8, 2011.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all public sector employers in the Commonwealth engaged in general industry activities covered by KRS Chapter 338.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: With this final rule, OSHA is removing or revising requirements within the regulations that are confusing, outdated, duplicative, or inconsistent. In this specific KAR, the amendment deletes the requirement to maintain written personal protective equipment training certificates for the cadmium standard. OSHA does not believe that the records provide a safety and health benefit. The amendment also clarifies the use of respirators when handling certain carcinogens and clarifies the application of several expanded chemical standards when employees are exposed at or above the action level or permissible exposure limit. The requirements to transfer records to NIOSH are removed in several expanded chemical standards by this final rule and changes regarding first aid for ingestion of chemicals are made in the non-mandatory appendix of the laboratory standard. While the changes to Subpart Z are numerous, none are substantial and according to OSHA they do not create any additional compliance duties for employers.

(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 costs expected with this amendment to the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):
Improved employees protection is likely to result from the promulgation of this amendment due to the consistency with the federal requirement, providing all a clear understanding of the requirements. Annual cost savings of 45 million are expected from all changes published in the final rule across all affected employers.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: (a) Initially: There will be no cost to implement this amendment.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this amendment to the administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. P.L. 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953
2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the June 8, 2011 confirmation of the publication date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by December 8, 2011.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the June 8, 2011 confirmation of the publication date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by December 8, 2011.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation does impose stricter, additional, or different requirements or responsibilities than those required by the federal standards. All of which existed prior to this amendment. This amendment will not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Section 2 of this administrative regulation carries requirements which are stricter than those required by OSHA. This section places requirements on employers related to the use of 4,4'-Methylene bis (2-Chloroaniline), which the federal regulation does not. This provision has been in place since February 12, 1996. Section 3 of this administrative regulation carriers requirements which are stricter than those required by OSHA. This section places requirements associated with research and quality control laboratory activities involving the use of the chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016. This provision has been in place since February 12, 1996. Section 4 of this administrative regulation carries requirements which are stricter than those required by OSHA. This section places requirements related to access to exposure or medical records. This provision has been in place since July 17, 1997. Section 5 of this administrative regulation carries requirements which are stricter than those required by OSHA. This section places requirements related to glove use as it applies to 29 C.F.R. 1910.1030. This provision has been in place since October 7, 1992.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?
This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in general industry activities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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

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

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

(c) How much will it cost to administer this program for the

first year? There are no costs expected from the amendment to the administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There are no costs expected from the amendment to this administrative regulation.

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

Revenues (+/-): n/a

Expenditures (+/-): n/a

Other explanation: Annual cost savings of 45 million are expected from all changes published in the final rule for all affected employers.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(Amendment)

803 KAR 2:403. Occupational health and environmental controls.

RELATES TO: KRS 338.051, 338.061, 29 C.F.R. 1926.50-1926.66, EO 2009-537

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, EO 2009-537

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. 29 C.F.R. 1926.50 to 1926.66 establish the federal requirements relating to occupational health and environmental controls. 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 the area of construction.

Section 1. Definitions. (1) "Assistant secretary" means Secretary, Labor Cabinet or Commissioner, Department of Workplace Standards, Labor Cabinet.

(2) "Director" means Director, Division of Occupational Safety and Health Compliance, Kentucky Labor Cabinet.

(3) "U.S. Department of Labor" means Kentucky Labor Cabinet or U.S. Department of Labor.

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, the construction industry shall comply with the following federal requirements published in the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. 1926.50 through 1926.66, revised July 1, 2010. [~~2008.~~]

(2) The amendments to 29 C.F.R. 1926.51, 1926.60, and 1926.62 as published in the June 8, 2011, Federal Register, Volume 76, Number 110. [~~1926.60 and 1926.62 as published in the December 12, 2008, Federal Register, Volume 73, Number 240~~.]

MARK S. BROWN, Chairman

APPROVED BY AGENCY: June 13, 2011

FILED WITH LRC: June 15, 2011 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 26, 2011 at 10:30 A.M. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 1, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Kristi Redmon, Health Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers in the construction industry to comply with the requirements of 29 C.F.R. Part 1926.50 through 1926.66. Section 2 also updates the C.F.R. to July 1, 2010, and establishes the amendments to 29 C.F.R. 1926.51, 1926.60 and 1926.62 as published in the June 8, 2011 Federal Register, Volume 76, Number 110. As a result of this final rule, 803 KAR 2:403 must be amended to include the adopted changes. The purpose of this revision was to remove and revise individual requirements within the rules that are confusing, outdated, duplicative, or inconsistent and to use clearer language so that the standards are easier to understand by employers, employees, and others who use them. It neither directly increases nor decreases the protection afforded to employees, nor does it increase employers' compliance obligations. The revision reorganized the text, removed inconsistencies among sections, and eliminated duplicative requirements. The standards are performance oriented to the extent possible and more concise than the original, with fewer subparagraphs and fewer cross-references to other standards. In 1926.51, potable water means water that meets the standard for drinking purposes of the State or local authority having jurisdiction, or water that meets the quality standards prescribed by the U.S. Environmental Protection Agency's National Primary Drinking Water Regulations found in 40 C.F.R. Part 141. There is also a section that relates to hand-drying products that must be provided which can be individual hand towels or sections thereof, of cloth or paper, air blowers or clean individual sections of continuous cloth toweling, convenient to the lavatories.

1926.60, relative to methylenedianiline, requires the employer to comply with the requirements concerning transfer of employee's records as set forth in 29 C.F.R. 1910.1020(h). 1926.62 concerns lead and blood sampling. Whenever an employee's blood lead level is at or above the numerical criterion for medical removal, the employer shall provide a second (follow-up) blood sampling test within two weeks after the employer receives the results of the first blood test. Also, the employer shall notify each employee whose blood lead level is at or above 40 g/dl that the standard requires temporary medical removal with benefits. It also states the requisites for an employee's returning to work. This amendment updates this administrative regulation to meet KRS Chapter 13A considerations. Finally, this amendment, which affects the construction industry, updates the C.F.R. to July 1, 2010.

(b) The necessity of this administrative regulation: Kentucky's occupational safety and health program is mandated by 29 C.F.R. Part 1953 to be at least as effective as the federal Occupational Safety and Health Administration (OSHA). In order to meet the demands of the June 8, 2011 final rule, and to ensure consistency and provide employers and employees with a clear understanding of the requirements, this amendment is adopted.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal

program.

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

(a) How the amendment will change this existing administrative regulation: Section 1 of this administrative regulation defines terms not found in the federal standard. This amendment to the administrative regulation, in Section 2, amends 29 C.F.R. 1926.51, 1926.60, and 1926.62 as published in the June 8, 2011 Federal Register, Volume 76, Number 110. The purpose of this revision was to remove and revise individual requirements within the rules that are confusing, outdated, duplicative, or inconsistent and to use clearer language so that the standards are easier to understand by employers, employees, and others who use them. It neither directly increases nor decreases the protection afforded to employees, nor does it increase employers' compliance obligations. The revision reorganized the text, removed inconsistencies among sections, and eliminated duplicative requirements. The standards are performance oriented to the extent possible and more concise than the original, with fewer subparagraphs and fewer cross-references to other standards.

(b) The necessity of the amendment to this administrative regulation: 29 C.F.R. 1953.23 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the promulgation date of the federal standard. Kentucky's occupational safety and health program is mandated by 29 C.F.R. Part 1953 to be at least as effective as the federal Occupational Safety and Health Administration (OSHA). In order to meet the demands of the June 8, 2011 final rule, and to ensure consistency and provide employers and employees with a clear understanding of the requirements, this amendment is adopted.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this regulation because it maintains consistency with the federal requirement, providing all a clear understanding of the requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all in the Commonwealth engaged in construction industry activities covered by KRS Chapter 338.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:. This regulation does not add requirements to the employer; it merely adds wording to clarify the requirement of the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Because the regulation does not add compliance requirements and only clarifies language in the regulation that is confusing, outdated, inconsistent or duplicative, no additional costs in paperwork or training are expected.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3) Improved employee protection is likely to result from promulgation of this amendment because employers and employees who clearly understand the requirements are more likely to comply with the requirements. In addition, employers may find it easier to comply with the amendment because it is more performance-oriented than the former regulation. This change will have little anticipated impact in Kentucky. The amendment applies to the construction industry.

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

(a) Initially: There will be no cost to implement this regulation.

(b) On a continuing basis: There will be no cost on a continuing basis to implement this administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

3. Minimum or uniform standards contained in the federal mandate. Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA.). In order to meet the demands of the June 8, 2011 final rule, and to ensure consistency and provide employers and employees with a clear understanding of the requirements, this amendment is adopted.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment does not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.

FISCAL NOTE ON 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 will affect any unit, part, or division of local government which is covered by KRS 338 and engaged in construction industry activities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation? KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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

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

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

(c) How much will it cost to administer this program for the first year? This amendment will not impose any cost. This amendment changes language in the regulation clarifying the requirements of employers as it relates to the provision of personal protective equipment and training.

(d) How much will it cost to administer this program for subsequent years? This amendment will not impose any subsequent cost. This amendment changes language in the regulation clarifying the requirements of employers as it relates to the provision of personal protective equipment and training.

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

Revenues (+/-): There will be no increase or decrease in local government revenues as a result of this amendment.

Expenditures (+/-): There will be no increase or decrease in local government expenditures as a result of this amendment.

Other explanation: non-applicable

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health
Education and Training
(Amendment)

803 KAR 2:407. Adoption of 29 C.F.R. Part 1926.250-252.

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS 338.051, 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and administrative regulations, and standards. [~~Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board.~~] The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. [~~The standards are arranged in numerical order in order to facilitate reference to 29 C.F.R. 1926.~~]

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means Secretary, Labor Cabinet or Commissioner, Department of Workplace Standards, Labor Cabinet.

(3) "C.F.R." means Code of Federal Regulations.

(4) "Employee" is defined by KRS 338.015(2).

(5) "Employer" is defined by KRS 338.015(1).

(6) "Established federal standard" is defined by KRS 338.015(10).

(7) "National consensus standard" is defined by KRS 338.015(9).

(8) "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(9) "Standard" means "occupational safety and health standard" as defined by KRS 338.015(3).

(10) "U.S. Department of Labor" means U.S. Department of Labor or Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, the construction 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. 1926.250 through 29 C.F.R. 1926.252, revised July 1, 2010; and

(2) The amendments to 29 C.F.R. 1926.251 as published in the June 8, 2011 Federal Register, Volume 76, Number 110.[~~Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1926.250 - 1926.252 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, revisions, and deletions:~~

~~(1) 29 C.F.R. 1926.250, "General Requirements for Storage", is amended, as follows:~~

~~(a) The additions to 29 C.F.R. 1926.250, "General Requirements for Storage", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, are incorporated by reference.~~

~~(b) The revision to 29 C.F.R. 1926.250, "General Requirements for Storage", as published in the Federal Register, Volume 59, Number 152, August 9, 1994, is incorporated by reference.~~

~~(2) The additions to 29 C.F.R. 1926.251, "Rigging Equipment for Material Handling", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, are incorporated by reference.~~

~~Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Department of Labor, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.~~

~~(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.~~]

MARK S. BROWN, Chairman

APPROVED BY AGENCY: June 13, 2011

FILED WITH LRC: June 15, 2011 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this amendment shall be held on July 26, 2011, at 10:30 A.M. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by 4:30 P.M. (ET) July 21, 2011, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 1, 2011.

Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kristi Redmon, CIH,Safety Standards Specialist, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon

(1) Provide a brief summary of:

(a) What this administrative regulation does: This amendment to the administrative regulation, in Section 2, amends 29 C.F.R. 1926.251 as published in the June 8, 2011 Federal Register, Volume 76, Number 110. The purpose of this revision was to remove and revise individual requirements within the rules that are confusing, outdated, duplicative, or inconsistent and to use clearer language so that the standards are easier to understand by employers, employees, and others who use them. It neither directly increases nor decreases the protection afforded to employees, nor does it increase employers' compliance obligations. The revision reorganized the text, removed inconsistencies among sections, and eliminated duplicative requirements. The standards are performance oriented to the extent possible and more concise than the original, with fewer subparagraphs and fewer cross-references to other standards. The revisions to the standard pertain to rigging equipment for material handling. The changes include: ensuring that the rigging equipment (slings and rope, both metal and synthetic) has legible identification markings by the manufacturer that indicate the recommended safe working load. The same requirement applies to shackles as well as ropes and slings. This amendment updates this administrative regulation to meet KRS Chapter 13A considerations. Finally, this amendment, which affects the construction industry, updates the C.F.R. to July 1, 2010.

(b) The necessity of this administrative regulation: Kentucky's occupational safety and health program is mandated by 29 C.F.R. Part 1953, to be at least as effective as the federal Occupational

Safety and Health Administration (OSHA). In order to meet the demands of the June 8, 2011 final rule, and to ensure consistency and provide employers and employees with a clear understanding of the requirements, this amendment is adopted.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: These amendments will enhance worker safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because employers and employees who clearly understand the requirements are more likely to comply with the requirements. In addition, employers may find it easier to comply with the amendment because it is more precise and performance-oriented than the former 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: This amendment to the administrative regulation, in Section 2, amends 29 C.F.R. 1926.251 as published in the June 8, 2011 Federal Register, Volume 76, Number 110. The purpose of this revision was to remove and revise individual requirements within the rules that are confusing, outdated, duplicative, or inconsistent and to use clearer language so that the standards are easier to understand by employers, employees, and others who use them. It neither directly increases nor decreases the protection afforded to employees, nor does it increase employers' compliance obligations. The revision reorganized the text, removed inconsistencies among sections, and eliminated duplicative requirements. The requirements are more precise and easily understood.

(b) The necessity of the amendment to this administrative regulation: 29 C.F.R. 1953.23 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the promulgation date of the federal standard. Kentucky's occupational safety and health program is mandated by 29 C.F.R. Part 1953, to be at least as effective as the federal Occupational Safety and Health Administration (OSHA). In order to meet the demands of the June 8, 2011 final rule, and to ensure consistency and provide employers and employees with a clear understanding of the requirements, this amendment is adopted.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will enhance worker safety throughout Kentucky. Improved employee protection is likely to result from promulgation of this amendment because employers and employees who clearly understand the requirements are more likely to comply with the requirements. In addition, employers may find it easier to comply with the amendment because it is more precise and performance-oriented than the former regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: These amendments affect all private and public sector employers in the Commonwealth engaged in construction activities covered by KRS Chapter 338.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Most may find it easier to comply with this amendment because it is more precise and performance-oriented than the former regulation. Certain provisions of the amendment add flexibility and may even reduce costs for public sector employers. This amendment replaces the former standards regulating the safety requirements of ropes and slings in the construction industry. It neither directly increases nor decreases the protection afforded to employees, nor does it increase employers' compliance obligations.

(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 costs expected with this amendment to the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employees protection is likely to result from the promulgation of this amendment due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

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

(a) Initially: There will be no initial cost to implement this administrative regulation. This amendment imposes no additional costs on any private or public sector entity. Certain provisions of this amendment add flexibility and may even reduce costs for employers.

(b) On a continuing basis: There will be no additional costs on any private or public sector entity to implement this regulation on a continuing basis. Certain provisions of this amendment add flexibility and may even reduce costs for employers.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor a need for increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. Kentucky's Occupational Safety and Health Program regulations affect all employers with one (1) or more employees. Inspections are conducted at facilities that pose higher risks to worker safety and health or at sites where the Kentucky Occupational Safety and Health Program has received referrals, worker complaints, or where a workplace fatality or an accident resulting in the hospitalization of three (3) or more employees has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18(c)(2).

2. State compliance standards. This amendment incorporates revisions published in the June 8, 2011 Federal Register to federal regulations addressing safety measures for ropes and slings, both metallic and synthetic. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and updates the C.F.R. to July 1, 2010.

3. Minimum or uniform standards contained in the federal mandate. This amendment, in Section 2, incorporates revisions published in the June 8, 2011 Federal Register, Volume 76, Number 110, which revises 29 C.F.R. Part 1926, Subpart H, Materials Handling, Storage, Use, and Disposal, Section 1926.251. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations. This amendment updates the C.F.R. to July 1, 2010.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards. It neither directly increases nor decreases the protection afforded to employees, nor does it increase employers' compliance obligations. Certain provisions of this amendment add flexibility and may even reduce costs for employers. Employers may find it easier to comply with the amendment because it is more performance-oriented than the former regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The revi-

sions impose no stricter, additional, or different responsibilities than the federal standards.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. State what unit, part, or division of local government this administrative regulation will affect. The amendment affects any unit, part, or division of local government employees engaged in construction work.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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

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

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

(c) How much will it cost to administer this program for the first year? There are no costs expected from the amendment to the administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There are no costs expected from the amendment to this administrative regulation.

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

Revenues (+/-): There will be no increase or decrease in local government revenues as a result of this amendment.

Expenditures (+/-): There will be no increase or decrease in local government expenditures as a result of this amendment.

Other explanation: Local governments may find it easier to comply with this amendment because it is more precise and performance-oriented than the former regulation. This amendment imposes no additional costs on any public sector entity. Certain provisions of the amendment add flexibility and may even reduce costs for public sector employers. This amendment replaces the former standards regulating the safety requirements of ropes and slings in the construction industry. It neither directly increases nor decreases the protection afforded to employees, nor does it increase employers' compliance obligations. This amendment will not affect the number of local government employees.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(Amendment)

803 KAR 2:425. Toxic and hazardous substances.

RELATES TO: 29 C.F.R. 1926.1101-1926.1152

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. 29 C.F.R. 1926.1101 to 1926.1152 establish the federal requirements relating to toxic and hazardous substances. This administrative regulation establishes the general standards to be enforced by the Department of Workplace Standards in the construction industry.

Section 1. The construction industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. 1926.1101 through 1926.1152, revised as of July 1, ~~2010~~ [~~2009~~]; and

(2) The amendments to 29 C.F.R 1926.1101 and 1926.1127 published in the June 8, 2011, Federal Register, Volume 76, Number 110. [~~The amendments to 29 C.F.R. 1926.1126 published in the March 17, 2010, Federal Register, Volume 75, Number 51, and confirmed in the May 14, 2010, Federal Register, Volume 75, Number 93.~~]

MARK S. BROWN, Chairman

APPROVED BY AGENCY: June 13, 2011

FILED WITH LRC: June 15, 2011 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 26, 2011 at 10:30 A.M. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 1, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, requires employers to comply with the requirements of 29 C.F.R. 1926. Section 1 also updates the C.F.R. to July 2010 and establishes the amendments to 29 C.F.R. 1926.1101 and 1926.1127 published in the June 8, 2011 Federal Register, Volume 76, Number 110. As a result of the final rule published in the June 8, 2011 Federal Register, 803 KAR 2:425 must be amended to include the adopted changes. With this final rule, OSHA is removing or revising requirements within the regulations that are confusing, outdated, duplicative, or inconsistent. In this specific KAR, the amendment removes the requirements to transfer records to NIOSH in two expanded health standards and instead refers to the recordkeeping requirements in 1910.1020. In this way OSHA is removing a requirement that is duplicated by 1910.1020. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the June 8, 2011 publication date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by December 8, 2011.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program.

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

(a) How the amendment will change this existing administrative regulation: Section 1 establishes the amendments to 29 C.F.R. 1926.1101 and 1926.1127 published in the June 8, 2011 Federal Register, Volume 76, Number 110. As a result of the final rule published in the June 8, 2011, Federal Register, 803 KAR 2:425 must be amended to include the adopted changes. With this final rule, OSHA is removing or revising requirements within the regulations that are confusing, outdated, duplicative, or inconsistent. In this specific KAR, the amendment removes the requirements to transfer records to NIOSH in two expanded health standards and instead refers to the recordkeeping requirements in 1910.1020. In this way OSHA is removing a requirement that is duplicated by 1910.1020.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the June 8, 2011 publication date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by December 8, 2011.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all public sector employers in the Commonwealth engaged in construction industry activities covered by KRS Chapter 338.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment removes a duplicative requirement that an employer must transfer records to NIOSH whenever an employer ceases to do business. Employers are not expected to have any new obligations from the changes to this KAR.

(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 costs expected with this amendment to the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employees protection is likely to result from the promulgation of this amendment due to the consistency with the federal requirement, providing all a clear understanding of the requirements. Annual cost savings of 45 million are expected from all changes published in the final rule across all affected employers.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: (a) Initially: There will be no cost to implement this amendment.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this amendment to the administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.
Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards.
The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the June 8, 2011 confirmation of the publication date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by December 8, 2011.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the June 8, 2011 confirmation of the publication date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by December 8, 2011.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. 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? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in construction industry activities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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

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

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

(c) How much will it cost to administer this program for the first year? There are no costs expected from the amendment to the administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There are no costs expected from the amendment to this administrative regulation.

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

Revenues (+/-): n/a

Expenditures (+/-): n/a

Other explanation: Annual cost savings of 45 million are expected from all changes published in the final rule for all affected employers.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(Amendment)

803 KAR 2:500. Maritime employment.

RELATES TO: KRS 338.015, 29 C.F.R. 1915, 1917, 1918, 1919

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. 29 C.F.R. Parts 1915, 1917, 1918, and 1919 establish federal requirements relating to maritime employment. This administrative regulation establishes maritime employment standards to be enforced by the Office of Occupational Safety and Health in the maritime industry.

Section 1. Definitions. (1) "Administration" means the Kentucky Labor Cabinet or Department of Workplace Standards.

(2) "Assistant secretary" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(3) "C.F.R." means Code of Federal Regulations.

(4) "Employee" is defined by KRS 338.015(2).

(5) "Employer" is defined by KRS 338.015(1).

(6) "U.S. Department of Labor" means U.S. Department of Labor or Kentucky Labor Cabinet.

Section 2. Except as modified by the definitions established in Section 1 of this administrative regulation, the maritime industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. Part 1915, revised July 1, 2010 [~~2009~~], relating to occupational safety and health standards for shipyard employment;

(2) 29 C.F.R. Part 1917, revised July 1, 2010 [~~2009~~], relating to maritime terminals;

(3) 29 C.F.R. Part 1918, revised July 1, 2010 [~~2009~~], relating to safety and health regulations for longshoring;

(4) 29 C.F.R. Part 1919, revised July 1, 2010 [~~2009~~], relating to gear certification; [~~and~~]

(5) The revisions to 29 C.F.R. Part 1915 published in the May 2, 2011, Federal Register, Volume 76, Number 84; and[~~s 1915, 1917, and 1918, published in the September 9, 2009, Federal Register, Volume 74, Number 173; and~~]

(6) The revisions to 29 C.F.R. Parts 1915, 1917, 1918 and 1919 published in the June 8, 2011, Federal Register, Volume 76, Number 110.[~~(6) The revisions to 29 C.F.R. 1915.1026, published in the March 17, 2010 Federal Register, Volume 75, Number 51 and confirmed in the May 14, 2010, Federal Register, Volume 75, Number 93.~~]

MARK S. BROWN, Chairman

APPROVED BY AGENCY: June 13, 2011

FILED WITH LRC: June 15, 2011 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 26, 2011 at 10:30 A.M. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 1, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. Parts 1915, 1917, 1918, and 1919. Section 2 also updates the C.F.R. to July 2010 and establishes the amendments to 29 C.F.R. Part1915 published in the May 2, 2011 Federal Register, Volume 76, Number 84, and the amendments to 29 C.F.R. 1915, 1917, 1918, and 1919 published in the June 8, 2011, Federal Register, Volume 76, Number 110. As a result of the adoption of the final rule published in the May 2, 2011 Federal Register, and the publication of the June 8, 2011 final rule, 803 KAR 2:500 must be amended to include the adopted changes. OSHA adopted many of the provisions in subpart F in 1972 from existing Federal occupational safety and health standards and national consensus standards (for example, sanitation, medical services and first aid, housekeeping). Since then, those national consensus standards have been updated and revised. OSHA carefully reviewed the updated standards and, when they encompassed new technology and requirements to provide greater workplace safety and health, has incorporated those changes in the final rule. With the May 2, 2011 final rule, OSHA is revising the requirements related to general working conditions in shipyard employment. Most of the revisions involve updates to existing requirements, however several provisions provide for protections from hazards not currently addressed by existing standards, which includes the control of hazardous energy. The provisions amended in this KAR affect the definitions; housekeeping; lighting; utilities; working alone; vessel radar and communication system; lifeboats; medical services and first aid; sanitation; control of hazardous energy; safety color code for marking physical hazards; accident prevention signs and tags; retention of DOT markings, placards, and labels; motor vehicle safety equipment, operation, and maintenance; servicing of multi-piece and single-piece rim wheels; ship's boilers; ship's piping systems; ship's propulsion machinery; and electric circuit and distribution boards sections of the maritime standards. All provisions existed prior to this revision except for the control of hazardous energy, motor vehicle safety equipment, operation and maintenance, and servicing rim wheels. With the June 8, 2011 final rule, OSHA is removing or revising requirements within the regulations that are confusing, outdated, duplicative, or inconsistent. The requirements affected in this specific KAR include revisions that make the applicable maritime standards consistent with all of the changes made to the general industry regulations. The amendments include revisions to respirator, sanitation, slings, and the recordkeeping requirements. All revisions to this administrative regulation affect only those public sector employees engaged in maritime work. All other employees fall within federal jurisdiction. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more

stringent amendment, within six (6) months of the May 2, 2011 and June 8, 2011 publication dates of the final rules. Kentucky does not have an effective alternative to the final rules. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by November 2, 2011and December 8, 2011 respectively. The amendment to 803 KAR 2:500, related to the May 2, 2011 Federal Register, was adopted by the Kentucky OSH Standards Board on May 10, 2011.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program.

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

(a) How the amendment will change this existing administrative regulation: Section 2 of the regulation updates the C.F.R. to July 2010 and establishes the amendments to 29 C.F.R. Part 1915 published in the May 2, 2011 Federal Register, Volume 76, Number 84. The amendments to the regulation alter several of the existing provisions for general working conditions in shipyard employment, while several provisions were added to provide additional protections. The provision for the control of hazardous energy (lockout/tagout) is one example. Section 2 also establishes the revision to 29 C.F.R. Parts 1915, 1917, 1918, and 1919 published in the June 8, 2011, Federal Register, Volume 76, Number 110. The requirements affected in this specific KAR include revisions that make the applicable maritime standards consistent with the changes made to the general industry regulations. The amendments include revisions to the respirator, sanitation, slings, and recordkeeping requirements. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the May 2, 2011 and June 8, 2011 publication dates of the final rules. Kentucky does not have an effective alternative to the final rules. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by November 2, 2011and December 8, 2011 respectively. The amendment to 803 KAR 2:500, published in the May 2, 2011 Federal Register was adopted by the Kentucky OSH Standards Board on May 10, 2011.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all public sector employers in the Commonwealth engaged in maritime industry activities covered by KRS Chapter 338.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment changes several existing requirements for the general working conditions in shipyard employment and adds several provisions that provide for greater protections to the employee. The control of hazardous energy is one such provision. Where employers were not previously required to protect employees by enforcing lockout/tagout requirements in the maritime industry, they will be with the addition of this provision. Requirements related to motor vehicle safety are also new to the maritime industry as well as the ability to apply the general industry requirements to servicing multi-piece and single-piece rim wheels. The amendments related to the June 8, 2011 final rule do not add any additional compliance duties of employers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): OSHA provides that the May 2, 2011 final rule will not significantly economically impact these entities. OSHA expects that implementation of the requirements in the entire May 2, 2011 final rule will cost approximately four million dollars annually for the entire industry. Compliance costs specific to this state were not available. There are no expected costs associated with the June 8, 2011.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employees protection is likely to result from the promulgation of this amendment due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

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

(a) Initially: There will be no cost to implement this amendment.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this amendment to the administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.
Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the May 2, 2011 and June 8, 2011 publication dates of the final rules. Kentucky does not have an effective alternative to the final rules. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirement by November 2, 2011and December 8, 2011 respectively. The amendment to 803 KAR 2:309, published in the May 2, 2011 Federal Register was adopted by the Kentucky OSH Standards Board on May 10, 2011.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the May 2, 2011 and June 8, 2011 publication dates of the final rules. Kentucky does not have an effective alternative to the final rules. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by November 2, 2011and December 8, 2011 respectively. The amendment to 803 KAR 2:309, published in the May 2, 2011 Federal Register was adopted by the Kentucky OSH Standards Board on May 10, 2011.

4. Will this administrative regulation impose stricter require-

ments, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation does not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. 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? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in maritime industry activities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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

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

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

(c) How much will it cost to administer this program for the first year? OSHA estimates that the implementation of the requirements in the entire May 2, 2011 final rule will increase annual costs by approximately four million dollars for the entire maritime industry. OSHA has determined that the rule will not involve large initial investments. No information was available specific to this state. There are no costs associated with the amendments created by the June 8, 2011 final rule.

(d) How much will it cost to administer this program for subsequent years? OSHA estimates that the implementation of the requirements in the entire May 2, 2011 final rule will increase annual costs by approximately four million dollars for the entire maritime industry. No information was available specific to this state. There are no costs associated with the amendments created by the June 8, 2011 final rule.

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: OSHA provides that the May 2, 2011 final rule will increase compliance costs by 4 million dollars to employers in the maritime industry. No information was available specific to this state. Annual cost savings of 45 million are expected from all changes published in the June 8, 2011final rule for all affected employers.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(Amendment)

803 KAR 2:505. Cranes and derricks in construction.

RELATES TO: KRS 338.015, 29 C.F.R. Part 1926.1400-1926.1441

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health rules and administrative regulations and standards. The following administrative regulation contains the standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means Secretary, Labor Cabinet or Commissioner, Department of Workplace Standards, Labor Cabinet.

(3) "C.F.R." means Code of Federal Regulations.

(4) "Employee" is defined by KRS 338.015(2).

(5) "Employer" is defined by KRS 338.015(1).

(6) "Established federal standard" is defined by KRS 338.015(10).

(7) "National consensus standard" is defined by KRS 338.015(9).

(8) "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(9) "Standard" means "occupational safety and health standard" as defined by KRS 338.015(3).

(10) "U.S. Department of Labor" means U.S. Department of Labor or Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. Except as modified by the definitions established in Section 1 <u>and the requirements in Section 3</u> of this administrative regulation, the construction industry shall comply with the following federal regulation published by the Office of the Federal Register, National Archives and Records Services, General Services Administration: 29 C.F.R. Part 1926, Subpart CC, Cranes and Derricks in Construction, published in the August 9, 2010 Federal Register, Volume 75, Number 152.

Section 3. (1) 29 C.F.R. 1926.1423(e)(1)(iii) is amended to read as follows: "On horizontal lattice booms where the fall distance is 10 feet or more."

(2) 29 C.F.R. 1926.1423(f) is amended to read as follows: "For assembly/disassembly work, the employer must provide and ensure the use of fall protection equipment for employees who are on a walking/working surface with an unprotected side or edge more than 10 feet above a lower level, except when the employee is at or near draw-works (when the equipment is running), in the cab, or on the deck."

(3) 29 C.F.R. 1926.1423(h)(2) is amended to read as follows: For erecting, climbing, and dismantling work, the employer must provide and ensure the use of fall protection equipment for employees who are on a walking/working surface with an unprotected side or edge more than 10 feet above a lower level." As approved by the Kentucky Occupational Safety and Health Standards Board.

MARK S. BROWN, Chairman

APPROVED BY AGENCY: June 13, 2011

FILED WITH LRC: June 15, 2011 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 26, 2011 at 10:30 A.M. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 1, 2011. 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: Bob Elkins, Safety Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY

127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3579, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Bob Elkins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 established a new standard in 29 C.F.R. Part 1926, Subpart CC—Cranes and Derricks in Construction, as published in the August 9, 2010 Federal Register, Volume 75, Number 152. Section 3 addresses the trigger height at which fall protection is required and under certain conditions, changes this height requirement from fifteen (15) to ten (10) feet. Falls from dangerous heights can occur when employees work on boom sections of cranes, especially during assembly/disassembly, when employees are gaining access to and from their work stations, or at other times when employees are working at elevations such as those on a tower crane walkway. For these reasons, changes relative to the fifteen (15) foot rule in the federal standards are to be changed to a ten (10) foot requirement in this regulation. This amendment likely will enhance employee safety by adding requirements, eliminating confusion concerning fall protection requirements, and clarifying employer obligations.

(b) The necessity of this administrative regulation: Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote greater worker health and safety throughout Kentucky and keep the state program as effective as the federal program.

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

(a) How the amendment will change this existing administrative regulation: It will add a new requirement, that of changing the fall protection trigger height on a crane from fifteen (15) feet to ten (10) feet, thus adding a greater degree of safety to the workers of Kentucky.

(b) The necessity of the amendment to this administrative regulation: Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA**.** It is felt that the requirements in this amendment will be as effective and add a greater degree of safety to the workers of Kentucky. This amendment to 803 KAR 2:505 was adopted by the Kentucky OSH Standards Board at its meeting on August 24, 2010.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This change will add consistency to Kentucky's fall protection requirements, by providing employers and employees in the construction industry with uniform fall protection requirements that are already set at ten (10) feet. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all private and public sector employers and employees in the Commonwealth engaged in construction industry activities covered by KRS Chapter 338.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There is one change required in this new amendment. Fall protection in certain applications is changed from fifteen (15) feet to ten (10) feet..

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be no added cost to the employer since fall protection is already required. All that has changed is the trigger height.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Workers provided the necessary hazard information and training will more fully participate in, and support, the protective measures instituted in their workplaces. These would lead to savings through accident and injury prevention, as well as property damage prevention.

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

(a) Initially: There will be no cost to the Kentucky OSH program to implement this regulation.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement this revision.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.
Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Section 3 of this amendment addresses the trigger height at which fall protection is required, and under certain conditions, changes this height requirement from fifteen (15) to ten (10) feet. This amendment was adopted by the Kentucky Occupational Safety and Health Standards Board at its May 10, 2011 meeting.

3. Minimum or uniform standards contained in the federal mandate. Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA, updates the regulation to meet KRS Chapter 13A considerations, and updates the Code of Federal Regulations to July 1, 2010.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment does impose stricter, additional, or different requirements or responsibilities than those required by the federal standards in that it requires safety fall protection at ten (10) feet rather than fifteen (15) feet, thus making for safer working conditions for Kentucky workers.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Falls from dangerous heights can occur when employees work on boom sections of cranes, especially during assembly/disassembly, when employees are gaining access to and from their work stations, or at other times when employees are working at elevations such as those on a tower crane walkway. For these reasons, changes relative to the fifteen (15) foot rule in the federal standards are to be changed to a ten (10) foot requirement in this regulation. This amendment likely will enhance employee safety by adding requirements, eliminating confusion concerning fall protection re-

quirements, and clarifying employer obligations.

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 will affect any unit, part, or division of local government covered by KRS 338 and engaged in construction industry activities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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

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

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

(c) How much will it cost to administer this program for the first year? There should 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 are no costs expected from the amendment to this administrative regulation.

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

Revenues (+/-): n/a

Expenditures (+/-): n/a

Other explanation: There should be no additional cost for subsequent years, since no new equipment is required since fall protection equipment is already being utilized.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and
Health Education and Training
(Amendment)

803 KAR 2:600. Occupational safety and health standards for agriculture.

RELATES TO: KRS 338.051, 338.061, 29 C.F.R. 1928

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. 29 C.F.R. 1928.1 to 1928.1027 establishes the federal requirements relating to occupational safety and health standards for agriculture. This administrative regulation establishes the occupational safety and health standards for agriculture to be enforced by the Division of Occupational Safety and Health Compliance in the agriculture industry.

Section 1. (1) "Assistant secretary" means Commissioner of Labor, Kentucky Department of Labor.

(2) "C.F.R." means Code of Federal Regulations.

(3) "Employee" is defined in KRS 338.015(2).

(4) "Employer" is defined in KRS 338.015(1).

(5) "U.S. Department of Labor" means Kentucky Labor Cabinet [~~Department of Labor~~] or U.S. Department of Labor.

Section 2. The agriculture industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, except as modified by the definitions in Section 1 of this administrative regulation and requirements in Section 3 of this administrative regulation:

(1) 29 C.F.R. 1928.1 through 29 C.F.R. 1928.1027, and Appendices, revised July 1, 2010 [~~2006~~]; and

(2) The amendment to 29 C.F.R. 1928.110 published in the June 8, 2011, Federal Register, Volume 76, Number 110. [~~The amendment to Subpart C published in the December 29, 2005, Federal Register, Volume 70, Number 249 and confirmed in the February 28, 2006, Federal Register, Volume 71, Number 39.~~]

Section 3. Scope and Application. (1) The language in subsection (2) of this section shall apply in addition to 29 C.F.R. 1928.1.

(2) The provisions of this administrative regulation adopt and extend the applicability of established federal standards contained in 29 C.F.R. Part 1928 to all employers, employees, and places of employment throughout the Commonwealth, except those excluded in KRS 338.021.

MARK S. BROWN, Chairman

APPROVED BY AGENCY: June 13, 2011

FILED WITH LRC: June 15, 2011 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 26, 2010 at 10:30 A.M. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 1, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1928. Section 2 also updates the C.F.R. to July 2010 and establishes the amendments to 29 C.F.R. 1928.110 published in the June 8, 2011, Federal Register, Volume 76, Number 110. Section 3 of the regulation extends the applicability of the regulations. As a result of the final rule published in the June 8, 2011, Federal Register, 803 KAR 2:600 must be amended to include the adopted changes. With this final rule, OSHA is removing or revising requirements within the regulations that are confusing, outdated, duplicative, or inconsistent. In this specific KAR, the amendment revises the definition of potable water to meet the standards set forth by the U.S. EPA. The former definition referred to an outdated public health standard that no longer exists. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the June 8, 2011 publication date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must

incorporate this federal requirement by December 8, 2011.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program.

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

(a) How the amendment will change this existing administrative regulation: Section 2 updates the C.F.R. to July 2010 and establishes the amendments to 29 C.F.R. 1928.110 published in the June 8, 2011, Federal Register, Volume 76, Number 110. As a result of the final rule published in the June 8, 2011 Federal Register, 803 KAR 2:600 must be amended to include the adopted changes. With this final rule, OSHA is removing or revising requirements within the regulations that are confusing, outdated, duplicative, or inconsistent. In this specific KAR, the amendment revises the definition of potable water to meet the standards set forth by the U.S. EPA. The former definition referred to an outdated public health standard that no longer exists.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the June 8, 2011 publication date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by December 8, 2011.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all public sector employers in the Commonwealth engaged in agriculture industry activities covered by KRS Chapter 338.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The revision of the definition of potable water to meet that required by the U.S. EPA is not expected to impact employers. Employers are not expected to have any new obligations from the changes to this KAR.

(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 costs expected with this amendment to the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):
Improved employees protection is likely to result from the promulgation of this amendment due to the consistency with the federal requirement, providing all a clear understanding of the requirements. Annual cost savings of 45 million are expected from all changes published in the final rule across all affected employers.

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

(a) Initially: There will be no cost to implement this amendment.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this amendment to the administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.
Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the June 8, 2011 confirmation of the publication date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by December 8, 2011.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the June 8, 2011 confirmation of the publication date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by December 8, 2011.

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

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

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?
This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in agriculture industry activities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties,

fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? There are no costs expected from the amendment to the administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There are no costs expected from the amendment to this administrative regulation.

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

Revenues (+/-): n/a

Expenditures (+/-): n/a

Other explanation: Annual cost savings of 45 million are expected from all changes published in the final rule for all affected employers.

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Agent Licensing
(Amendment)

806 KAR 9:220. Continuing education.

RELATES TO: KRS 304.9-260, 304.9-295, 304.14-642, 304.15-700(3), Pub.L. 108-264 sec. 207

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.9-295(5), (7), 304.14-642(5), 304.15-720, Pub.L. 108-264 sec. 207

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 provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.9-295(6) and (8) authorize the commissioner to limit the number of continuing education hours carried forward to the subsequent biennium. KRS 304.14-642(5) requires the commissioner to promulgate an administrative regulation to implement the Kentucky Long-Term Care Partnership Program. KRS 304.15-720 requires the commissioner to promulgate administrative regulations to implement KRS 304.15-700 to 304.15-720, Kentucky's Life Settlement Law. Pub.L. 108-264 sec. 207 requires the Administrator of the Federal Emergency Management Agency to establish minimum training and education requirements for all insurance agents who sell flood insurance policies in cooperation with state insurance regulators. This administrative regulation establishes procedures for approval of agent and life settlement broker continuing education courses and obtaining credit for attending continuing education courses.

Section 1. Definitions. (1) "Commissioner" means the Commissioner of the Department of Insurance.

(2) "Department" means the Department of Insurance.

(3) "Provider" means the sponsor of a continuing education course.

Section 2. Continuing Education Course Requirements. (1) A continuing education course shall be offered by a provider approved by the commissioner, pursuant to this section:

(a) The application for approval of a provider shall be submitted on the "Provider Approval Application" form incorporated by reference, in 806 KAR 9:340; and

(b) The information shall show that the provider is qualified, through knowledge or experience, to provide prelicensing or continuing education courses and that the provider is properly authorized to charge a course fee, if any.

(2) (a) A continuing education course shall be filed with and approved by the commissioner at least sixty (60) days in advance of advertising unless the commissioner [~~,~~] waives the sixty (60) day period.

(b) In determining whether to grant a waiver, the commissioner shall consider whether the failure to file and approve the continuing education course within the time period specified in paragraph (a) of this subsection was due to circumstances which would reasonably justify failure to comply.

(3) (a) 1. All applications for approval of a continuing education course shall be submitted on the "Course Approval Application" form incorporated by reference, in 806 KAR 9:340, which shall be accompanied by the "Filing Fee Submission Form" incorporated by reference, in 806 KAR 9:340, and a nonrefundable initial fee of ten (10) dollars.

2. Notwithstanding the requirements in paragraph (a)1 of [~~Of~~] this subsection, application for approval of a continuing education course being offered in more than one (1) state[~~,~~] may be submitted on the National [~~Nation~~] Association of Insurance Commissioners' "Uniform Continuing Education Reciprocity Course Filing Form" incorporated by reference in 806 KAR 9:340.

(b) After review and assignment of the number of credit hours, the commissioner shall notify the provider of the additional fee of five (5) dollars per credit hour due pursuant to 806 KAR 4:010.

(c) A continuing education course shall not be approved until all fees are paid.

(4) The commissioner shall approve a continuing education course if it meets the following requirements:

(a) The continuing education course shall contribute directly, at a professional level, to the competence of the licensee including the following subjects:

1. Insurance, annuities, and risk management;
2. Insurance laws and administrative regulations;
3. Mathematics, statistics, and probability;
4. Economics;
5. Business law;
6. Finance;
7. Taxes;
8. Agency management including all aspects of agency operations that support the long-term stability of the agency system and - encourage [~~encouragement~~] the service and protection of customers, unless specifically excluded in subsection (5) of this section;
9. Ethics; and
10. Other topics approved by the commissioner which contribute directly at a professional level to the competence of the licensee; and (b) Course development and presentation:

1. The continuing education course shall have substantial intellectual or practical content to enhance and improve the knowledge and professional competence of participants;

2. The course shall be developed by persons who are qualified in the subject matter and instructional design;

3. Material shall be current, relevant, accurate, and include valid reference materials, graphics, and interactivity;

4. The course shall have clearly defined objectives and course completion criteria;

5. Each course shall have a written outline and study materials or texts;

6. Information shall show that the instructors are qualified, through training or experience, to instruct the continuing education course competently and shall be submitted on the "Instructor Approval Application" incorporated by reference, in 806 KAR 9:340, and shall be accompanied by the "Filing Fee Submission Form" incorporated by reference, as in 806 KAR 9:340;

7. The number of participants and physical facilities shall be consistent with the teaching method specified; and

8. All courses shall include some means of evaluating quality.

(5) Continuing education credit shall not be provided for:

(a) Any course used to prepare for taking an examination required pursuant to KRS Chapter 304;

(b) Committee service of professional organizations;

(c) Computer training to develop functional skills;

(d) Motivational or sales training courses; and

(e) Any course not in accordance with Section 2(4) of this administrative regulation.

(6) Any material change in a continuing education course shall be filed with and approved by the commissioner prior to use. The material change shall not be approved until the filing fees are paid in accordance with subsection (3) of this section.

(7) Biennially, providers shall renew approval of continuing education courses and instructors. Providers shall file applicable information with and pay the applicable fee specified in 806 KAR 4:010 to the commissioner prior to June 30 of even-numbered years.

Section 3. Measurement of Credit Hours. Continuing education courses shall be measured according to course type and calculated in the following manner:

(1) Classroom courses. Each credit hour of a continuing education course shall include at least fifty (50) minutes of continuous instruction or participation.

(2) Self-Study Courses. Each credit hour of a continuing education course completed online or by correspondence shall be calculated in accordance with the National Association of Insurance Commissioners' "Recommended Guidelines for Online Courses."

(3) A continuing education course, regardless of whether it is offered as a classroom course, online course, by correspondence, or self-study, shall not be credited for continuing education by a licensee more than once per continuing education biennium.

Section 4. Reasons for Withdrawal. The commissioner may withdraw approval of a continuing education course, provider, or instructor for any of the following reasons:

(1) The continuing education course teaching methods or course content:

(a) No longer meet the requirements of:

1. KRS 304.9-295; or

2. Sections 2 and 3 of this administrative regulation; or

(b) The course has been materially changed without being filed with and approved by the commissioner, in accordance with Section 2 of this administrative regulation;

(2) The continuing education course provider has certified to the commissioner that a licensee has satisfactorily completed the course when, in fact, the licensee has not done so;

(3) The continuing education course provider fails to certify to the commissioner that a licensee has satisfactorily completed the course when, in fact, the licensee has done so; or

(4) Unethical conduct of a provider or instructor.

Section 5. Product Specific Continuing Education and Training Requirements. (1) Any resident licensee selling, soliciting, or negotiating insurance products that qualify under the Long-Term Care Partnership Insurance Program, as described in KRS 304.14-462, shall complete eight (8) hours of initial long-term care training, and four (4) hours of additional training for each biennial continuing education compliance period.

(2) Any resident licensee licensed with Property and Casualty lines of authority selling federal flood insurance shall complete three (3) hours of training in accordance with the Flood Insurance Reform Act of 2004, as set forth in Pub.L. 108-264, Section 207.

(3)(a) Any individual licensee selling, soliciting or negotiating the sale of an annuity, as defined in KRS 304.5-030, shall successfully complete four (4) hours of initial training that shall include information on the following topics:

1. The types of annuities and various classifications of annuities;

2. Identification of the parties to an annuity;

3. The manner in which fixed, variable and indexed annuity contract provisions affect consumers;

4. The application of income taxation of qualified and non-qualified annuities;

5. The primary uses of annuities; and

6. Appropriate sales practices, replacement and disclosure requirements.

(b) The training required by subsection (3)(a) of this section shall not include:

1. Marketing information;

2. Sales techniques; or

3. Specific information about a particular insurer's product.

(c) An individual licensee who holds a life line of authority on the effective date of this administrative regulation shall complete the training requirements set forth in subsection (3)(a) of this section within six (6) months after the effective date of these training requirements.

(d) An individual licensee who obtains a life line of authority on or after the effective date of this administrative regulation shall complete the training requirements set forth in subsection (3)(a) of this section prior to selling, soliciting or negotiating the sale of an annuity.

(e) The training required by subsection (3)(a) of this section shall be filed and approved in accordance with Section 2 of this administrative regulation.

(f) The satisfaction of the training requirements of another state that are substantially similar to the provisions of subsection (3)(a) of this section shall satisfy the training requirements in this section.

(g) The training requirements in this subsection shall be effective on January 1, 2012.

(4) The training requirements in subsections (1), (2) and (3) [~~and (2)~~] of this section may apply toward fulfillment of a licensee's continuing education requirement as set forth in KRS 304.2-295 and 304.15-700(3), if the training has been approved as a continuing education course in accordance with Section 2 of this administrative regulation and proof of completion is made in accordance with Section 6 of this administrative regulation.

Section 6. Proof of Completion. (1)(a) Within thirty (30) days of completion of a continuing education course, the provider shall certify to the commissioner the names of all licensees who satisfactorily completed the continuing education course.

(b) The provider shall maintain the "Continuing Education Course Attendance Roster" form, incorporated by reference in 806 KAR 9:340, for at least five (5) years and shall be subject to random audits to ensure compliance with this requirement.

(c) The certification of completion required by this section for a classroom course shall be submitted electronically on the "Continuing Education Course Attendance Roster" form, incorporated by reference in 806 KAR 9:340, through the Department of Insurance Web site, https://insurance.ky.gov/eservices/default.aspx.

(d) 1. The certification of completion required by this section for a self-study course shall be submitted on the "Continuing Education Certificate of Completion" Form, incorporated by reference in 806 KAR 9:340.

2. The provider shall:

a. Forward the form to the licensee for signature; and

b. Instruct the licensee to file the form with the commissioner.

3. In addition, the information may be submitted electronically by the provider to the commissioner through the Department of Insurance Web site, https://insurance.ky.gov/eservices/default.aspx.

(2) (a) The provider of the continuing education course shall furnish to the licensee attending the course a certificate and the licensee shall retain the certificate for at least five (5) years.

(b) The certification required by this subsection shall be on the "Continuing Education Certificate of Completion" Form, incorporated by reference in 806 KAR 9:340.

(c) The provider of the continuing education course shall retain a copy of the certificate for at least five (5) years.

(d) Providers of continuing education courses and licensees shall make available to the commissioner's designee copies of these certificates upon the request of the commissioner.

(3) Pursuant to KRS 304.9-295(2) and (9), every licensed individual required to complete continuing education shall be responsible for ensuring that his or her continuing education certificates of completion are timely filed with the department even if the provider does not fulfill its responsibilities under this administrative regulation.

(4) (a) At least six (6) hours of total credit earned per biennium shall be directly related to any one (1) or more of the lines of authority for which the agent is actively licensed.

(b) At least three (3) hours of total credit earned per biennium shall be in ethics.

(c) Hours may be classroom, self-study, or a combination of both.

(5) Each self-study course shall require successful completion of a written examination or the submission of a statement by the licensee made under oath that the course was completed within the biennium.

(6) Licensees may carry forward up to twelve (12) excess credit hours to the subsequent continuing education biennium.

Section 7. Cancellation and Reinstatement of Licenses. (1) Proof of fulfillment of a resident licensee's continuing education requirement shall be received in conjunction with license renewal in accordance with KRS 304.9-260 and 304.9-295.

(2) If the department does not receive proof of the fulfillment of a licensee's continuing education requirements on or before the deadline, pursuant to KRS 304.9-295, [.] the commissioner shall:

(a) Make information of the deficiency available to the licensee; and

(b) Terminate the license if proof of completion of the deficient hours on the "Continuing Education Course Attendance Roster" Form incorporated by reference, in 806 KAR 9:340, or the "Continuing Education Certificate of Completion" Form incorporated by reference, in 806 KAR 9:340, is not received by the department on or before the deadline in accordance with KRS 304.9-295.

(3) Within twelve (12) months after a license is terminated for failing to submit certification of continuing education, the license may be reissued if the licensee:

(a) Satisfies the delinquent continuing education requirements;

(b) Submits a new application with required attachments for a license; and

(c) Submits the applicable fees.

(4) If the continuing education delinquency remains unsatisfied for twelve (12) months or longer, the former licensee shall satisfy all of the licensing requirements specified in KRS Chapter 304, Subtitle 9.

Section 8. Requests for an Extension of Time for Continuing Education. (1) An agent exempted from continuing education requirements on the basis of a supporting affidavit that the agent license is maintained for the sole purpose of receiving renewals or deferred commissions may withdraw the continuing education exemption and may have all restrictions against selling, soliciting, and negotiating insurance removed from the agent license by:

(a) Completing the continuing education requirements for the immediate preceding continuing education biennium;

(b) Providing a certification of completion of those continuing education requirements; and

(c) Providing a signed, written statement withdrawing the affidavit.

(2) Use of a supporting affidavit that the agent license is maintained for the sole purpose of receiving renewals or deferred commissions for any reason, including an extension for completion of continuing education requirements for a continuing education biennium, shall be a violation of KRS 304.9-295 and shall subject the affiant to suspension or revocation of the agent license.

(3) Members of the Armed Forces who have been mobilized or deployed in support of their duties may:

(a) Request an extension of time for completion of continuing education requirements, in accordance with KRS 304.9-260(3), by filing with the department form, "Request for Waiver of Renewal Procedures or Exemption from Examination or Extension for Continuing Education Due to Active Military Service Deployment," incorporated by reference in 806 KAR 9:340; or

(b) Request a waiver for continuing education requirements in accordance with KRS 304.9-260(3).

Section 9. Limited lines of authority as identified in KRS 304.9-230 shall be exempt from all continuing education requirements.

Section 10. Incorporation by Reference. (1) "Recommended Guidelines for Online Courses", 2005 National Association of Insurance Commissioners, 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.

SHARON P. CLARK, Commissioner
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: June 14, 2011

FILED WITH LRC: June 15, 2011 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 27, 2011, at 9:00 a.m. (EST), 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 July 20, 2011, 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 August 1, 2011. 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 procedures for approval of agent and life settlement broker continuing education courses and obtaining credit for attending continuing education courses. This regulation also establishes procedures for training required for the federal Flood Insurance Program and the Long-Term Care Partnership Act.

(b) The necessity of this administrative regulation: This administrative regulation fulfills the commissioner's statutory obligation to specify licensee education forms and processes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the commissioner may adopt reasonable administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.9-295(6) and (8) authorize the commissioner to limit the number of continuing education hours carried forward to the subsequent biennium and to prescribe the form used to certify completion of a continuing education course. KRS 304.14-642(5) requires the commissioner to promulgate an administrative regulation to implement the Kentucky Long-Term Care Partnership Program. KRS 304.15-720 requires the commissioner to promulgate administrative regulations that are necessary for the licensing of life settlement brokers. Pub.L. 108-264 sec. 207 requires the Administrator of the Federal Emergency Management Agency to establish minimum training and education requirements for all insurance agents who sell flood insurance policies in cooperation with state insurance regulators.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation supplements the general statutory provisions for continuing education and carry over credit hours by specifying the continuing education procedure, the measurement of credit hours, the approval of courses and instructors, the number of hours and distribution of course work, the number of carry over hours, and exemption from continuing education.

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

(a) How the amendment will change this existing administrative regulation: This amendment includes specific training requirements for insurance producers selling annuities.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to adopt the revisions to the National Association of Insurance Commissioner's Suitability in Annuity Transactions Model Regulation regarding training for those selling annuity products. These changes are supported by the National Conference of Insurance Legislators. They make Kentucky's regulation consistent with the training requirements established by Financial Industry Regulatory Authority (FINRA) for the sale of variable annuities, and enable Kentucky to be eligible for federal grants to be offered under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-

203) for states to hire staff, fund technology and develop educational materials to help protect seniors.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the commissioner may adopt reasonable administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code as defined in KRS 304.1-010. The amendment adds specific training requirements for those selling annuities to ensure the suitability of the product for the insured, as required in 806 KAR 12:090.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in ensuring that those selling annuities are well trained in the complexities of annuity products and can provide sound recommendations on the suitability of these products to consumers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendment to this administrative regulation will affect approximately 470 insurers and 66,000 insurance producers offering annuity products.

(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 require insurance producers to receive four (4) hours training prior to selling an annuity or, if already licensed, to receive the required training within six (6) months. Insurers will be required to ensure that the agents representing them have received this training.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost of attending a training class, if any, will be determined by the provider offering the class.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The insurers and agents will be in compliance with state law and will have resources to aid consumers in purchasing an annuity.

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

(a) Initially: There should be no initial cost to implement this administrative regulation.

(b) On a continuing basis: There should be no 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 costs are incurred, the budget of the Kentucky Department of Insurance will be used to implement and enforce this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendments to this administrative regulation do not establish any new fees or increase any existing fees. The existing administrative regulation did include a ten (10) dollar fee for the initial filing of a continuing education course and an additional five (5) dollar fee for each additional approved credit hour.

(9) TIERING: Is tiering applied? No, tiering does not apply because this administrative regulation is applied in the same manner to all licensees subject to continuing education and to all providers filing for approval of continuing education courses.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: The federal statute requiring promulgation of this administrative regulation is Pub. L. 108-264, the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004.

2. State compliance standards. Section 207 of the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004 requires the Director of the Federal Emergency Management Agency to establish minimum training and education requirements for all insurance agents who sell flood insurance policies in cooperation with the insurance industry, state insurance regulators and other interested parties.

3. Minimum or uniform standards contained in the federal mandate. The minimum training and education requirements were published on September 1, 2005, in the Federal Register, Vol. 70 No. 169, at page 52117. Additionally, the National Association of Insurance Commissioners (NAIC) has adopted a uniform training bulletin for states to issue outlining the process to implement the training requirements.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, this regulation does not impose stricter, additional, or different requirements than the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. n/a

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? 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(1), 304.9-295(6) and (8), 304.14-642(5), 304.15-720, Pub. L. 108-264 sec. 207

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 amendments to this regulation will not have a significant impact on the expenditures and revenues of the Department of Insurance.

(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 amendments to this regulation will not generate significant revenue for the Department of Insurance 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 amendments to this regulation will not generate significant revenue for the Department of Insurance in subsequent years.

(c) How much will it cost to administer this program for the first year? There will not be a cost to administer the amendments to this regulation in the first year.

(d) How much will it cost to administer this program for subsequent years? There will not be a cost to administer the amendments to this regulation 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 Continuing education providers may file the required training classes for approval with the Department of Insurance. There is a $10 filing fee for filing the class and a $5 fee per credit hour. The training required by the amendments to this regulation is required to be 4 hours. Therefore, the cost of filing a training class will be $30. It is unknown how many providers will file training classes with the Department.

PUBLIC PROTECTION CABINET
Department of Insurance
Health and Life Division
(Amendment)

806 KAR 17:180. Standard health benefit plan.

RELATES TO: KRS 304.17A-080, 304.17A-250
STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-250(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 304.17A-250(1) requires the Commissioner of Insurance to define by administrative regulation one (1) standard health benefit plan. This administrative regulation establishes one (1) standard health benefit plan that may be offered by an insurer in the individual and small group markets and establishes procedures for modifications to the standard health benefit plan.

Section 1. Definitions. (1) "Department" is defined by KRS 304.1-050(2).
(2) "Health Insurance Advisory Council" means the body established in accordance with KRS 304.17A-080.
(3) "Standard health benefit plan" means the format, cost-sharing levels, definitions, benefits, exclusions, and supplemental benefit riders:
(a) Established by the department in accordance with KRS 304.17A-250 and any other health insurance benefit mandated by the General Assembly; and
(b) Included in the Kentucky Standard Health Benefit Plan, HIPMC-SP1.

Section 2. Modification Process. (1) The standard health benefit plan shall remain in effect until the plan or any form is modified in accordance with the procedures established by this section.
(2) The standard health benefit plan may be modified each year and each modification shall apply to each policy or certificate issued or renewed on or after July 15.
(3) A person wishing to make a recommendation for modification of the standard health benefit plan shall:
(a) Submit the recommendation, in writing, to the Kentucky Department of Insurance, Health and Life Division, by May 1 of the year preceding the year in which each modification is recommended for implementation;
(b) Explain the need for each recommended modification; and
(c) Provide a statement regarding the cost effect of each recommended modification.
(4) Prior to July 1 of each year:
(a) The department shall present each recommendation for modification received pursuant to subsection (3) of this section to the Health Insurance Advisory Council for consideration;
(b) The Health Insurance Advisory Council shall review and discuss each recommendation for modification of the standard health benefit plan in accordance with KRS 304.17A-080(3);
(c) The Health Insurance Advisory Council shall make a final recommendation for modification of the standard health benefit plan based on the recommendations presented by the department pursuant to paragraph (a) of this subsection; and
(d) After considering the final recommendation for modification from the Health Insurance Advisory Council, the department shall either accept or decline, in writing, to modify the standard health benefit plan.
(5) Each insurer issuing, delivering, or renewing a standard health benefit plan shall:
(a) Implement each modification to the standard health benefit plan prescribed by the department; and
(b) Amend each policy form and rate filing to include modifications to the standard health benefit plan.

Section 3. Incorporation by Reference. (1) "The Kentucky Standard Health Benefit Plan, HIPMC-SP1", (5/2011)[~~(7/2010)~~] 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. This material is also available on the department's Web site at http://insurance.ky.gov.

SHARON P. CLARK, Commissioner
ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: June 14, 2011
FILED WITH LRC: June 15, 2011 at 10 a.m.
PUBLIC HEARING AND COMMENT PERIOD
A public hearing on this administrative regulation shall be held on July 27, 2011, at 9:00 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 July 20, 2011, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 1, 2011. 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: The regulation establishes the Kentucky standard health benefit plan and the process for submitting changes to this plan.
(b) The necessity of this administrative regulation:
KRS 304.17A-250(1) states that the commissioner "shall, by administrative regulations promulgated under KRS Chapter 13A, define one (1) standard health benefit plan. After July 15, 2004, insurers may offer the standard health benefit plan in the individual or small group markets. Except as may be necessary to coordinate with changes in federal law, the executive director shall not alter, amend, or replace the standard health benefit plan more frequently than annually. 2011 Ky. Acts Ch. 92 requires health benefit plans (including the standard health benefit plan) to impose the same copayment or coinsurance for an office visit to an occupational therapist or a physical therapist as the amount charged to visit a physician or osteopath.
(c) How does this administrative regulation conform to the content of the authorizing statutes:
The regulation provides procedures for submitting changes to the standard health benefit plan.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation currently provides form filing procedures and provides the amendments to this plan, including amendments to conform the cost-sharing amounts applicable to occupational and physical therapists as required by 2011 Ky. Acts ch. 92.
(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 make technical corrections and will amend the material incorporated by reference in conformance with changes created by the 2011 Legislative session and Patient Protection and Affordable Care Act ("PPACA") Pub. L. 111-148.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to incorporate appropriate changes made by state and federal law into the Kentucky standard health benefit plan.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.17A-250 requires the Commissioner to

establish the standard health benefit plan. This amendment will revise the standard health benefit plan in conformance with changes in state and federal law.

(d) How the amendment will assist in the effective administration of the statutes: KRS 304.17A-250 requires the Commissioner to establish the Standard Health Benefit plan. This amendment will revise the standard health benefit plan in conformance with changes in state and federal law. Insurers offering the revised standard health benefit plan will be in compliance with the revised laws.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Amendment to this administrative regulation will affect the Kentucky Access and three (3) insurers who have individuals covered under a standard health benefit plan. Additionally any insurer with a health line of authority may file forms to offer the standard health benefit plan.

(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: These entities will be required to make conforming amendments to their forms after the effective date of this regulation. Once the filing is approved, the entities will need to implement the change.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): These entities will be responsible for a filing fee of five dollars to amend a form. The cost to implement a change in a product is specific to the entity.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will have a revised standard health benefit product in compliance with state and federal law.

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

(a) Initially: Minimal, if any.

(b) On a continuing basis: Minimal, if any.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The budget of the Department of Insurance.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No new fees, or direct or indirect increases in fees, will be established or incurred.

(9) TIERING: Is tiering applied? Tiering is not applied; the provisions of this administrative regulation will be implemented in the same manner for all insurers who have a standard health benefit plan product.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Kentucky Revised Statute 304.2-110 (1) 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. KRS 304.17A-250(1) states that the commissioner "shall, by administrative regulations promulgated under KRS Chapter 13A, define one (1) standard health benefit plan. After July 15, 2004, insurers may offer the standard health benefit plan in the individual or small group markets. Except as may be necessary to coordinate with changes in federal law, the commissioner shall not alter, amend, or replace the standard health benefit plan more frequently than annually. 2011 Ky. Acts Ch. 92 requires health benefit plans (including the standard health benefit plan) impose the same cost sharing for occupational and physical therapists as the cost-sharing for physicians and osteopaths.

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 amended regulation should 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? The amended regulation will not generate additional revenue.

(c) How much will it cost to administer this program for the first year? The cost of administering this program will not change.

(d) How much will it cost to administer this program for subsequent years? The cost of administering this program will not change.

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
Department of Insurance
Division of Kentucky Access
(Amendment)

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

RELATES TO: 2010 ES Ky Acts ch. 1, Part XII, secs. 1-8, 12, KRS 304.1-050(2), 304.2-310, 304.9-020(1), 304.17A-005(22)

STATUTORY AUTHORITY: KRS 304.2-110(1), 2010 ES Ky Acts ch. 1, Part XII, secs. 1(2), 1(3), 2(5)

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. 2010 ES Ky Acts ch. 1, Part XII, sec. 1(2) and (3) require the department to establish by administrative regulation eligibility requirements for employers and employees to qualify for the ICARE Program. 2010 ES Ky Acts ch. 1, Part XII, sec. 2(5) requires the department to establish guidelines for determination of preference for employer groups based upon federal poverty level, eligibility criteria, health care incentive payment procedures, program participating insurer and employer reporting requirements, and administrative guidelines for the ICARE Program. This administrative regulation establishes the application, appeal process, annual review, health care incentive payment procedures, and eligibility criteria for employers in the ICARE Program.

Section 1. Definitions. (1) "Agent" is defined in KRS 304.9-020(1).

(2) "Complete ICARE Program renewal application" means the ICARE Program renewal application, ICARE-APP-1, with all fields completed and all required attachments, including:

(a) Documentation verifying that the employer group's average annual salary is 300 percent of the federal poverty level or below, which may include the employer's:

1. Quarterly unemployment tax statement; or

2. Payroll register;

(b) Documentation supporting coverage of the employer group under a qualified health benefit plan if:

1. The employer group is participating in the ICARE Program as a previously uninsured group; or

2. The employer group is participating in the ICARE Program under the high cost condition category and the employer group has changed coverage during the ICARE Program year;

(c) Employee ICARE Program high-cost condition certification, if applicable; and

(d) Any additional attachments, if applicable.

(3) "Department" is defined in KRS 304.1-050(2).

(4) "Eligible employee" is defined in 2010 ES Ky Acts ch. 1, Part XII, Sec. 1(3).

(5) "Eligible employer" is defined in 2010 ES Ky Acts ch. 1, Part XII, Sec. 1(2).

(6) "Federal poverty level" means a standard of income for an individual who resides in one (1) of the forty-eight (48) contiguous states which:

(a) Is issued annually by the United States Department of Health and Human Services;

(b) Is published annually in the Federal Register; and

(c) Accounts for the previous year's price increases as measured by the consumer price index.

(7) "Full time employee" means an employee who works at least twenty-five (25) hours per week.

(8) "Full time equivalent" means a number that equals the total hours worked per week by part time employees divided by twenty-five (25).

(9) "Health benefit plan" is defined in KRS 304.17A-005(22).

(10) "Health care incentive payment" means a payment as established in 2010 ES Ky Acts ch. 1, Part XII, secs. 2(3) and 4(1).

(11) "ICARE Program" means the Insurance Coverage, Affordability and Relief to Small Employers Program as established in 2010 ES Ky Acts ch. 1, Part XII, sec. 2(1).

(12) "ICARE Program high-cost condition" means a high-cost condition as:

(a) Defined in 2010 ES Ky Acts ch. 1, Part XII, sec. 1(5); and

(b) Established in 806 KAR 17:540.

(13) "ICARE Program participating employer" means an eligible employer who is enrolled in the ICARE Program.

(14) "ICARE Program participating insurer" is defined in 2010 ES Ky Acts ch. 1, Part XII, sec. 1(6).

(15) "ICARE Program year" means a one (1) year period of time beginning on an eligible employer's enrollment date in the ICARE Program.

(16) "Insurer" is defined in KRS 304.17A-005(27).

(17) "Qualified health benefit plan" is defined in 2010 ES Ky Acts ch. 1, Part XII, sec. 1(8).

Section 2. Employer Eligibility. (1) To determine the number of employees of an employer pursuant to 2010 Ky Acts ch. 127, Part XII, sec. 1(2), the department shall consider:

(a) Full time employees; and

(b) Full time equivalents rounded to the nearest whole number.

(2) The average annual salary of the employer group shall not exceed 300 percent of the most current federal poverty level for a family of three (3). To determine the average annual salary of the employer group pursuant to 2010 ES Ky Acts ch. 1, Part XII, sec. 2(4), the department shall:

(a) Calculate the sum of the annual gross salaries of all eligible employees, excluding the salary of any employee:

1. With an ownership interest in the business;

2. Who is a Medicare-eligible employee;

3. Who has attained age sixty-five (65); or

4. Who does not meet eligibility requirements for participation in the employer-sponsored health benefit plan established by the employer and insurer; and

(b) Divide the sum calculated in paragraph (a) of this subsection by the total number of employees whose salaries were used in the calculation established in paragraph (a) of this subsection.

(3) An eligible employer shall pay fifty (50) percent or more of the average single premium cost of qualified health benefit plan coverage for each eligible employee.

(4) An eligible employer shall have at least one (1) eligible employee who is not an owner of the business.

Section 3. Changes in Application Information. An ICARE Program participating employer shall provide written notification of any change in ICARE Program application information to the department within thirty (30) days of the date of the change.

Section 4. Renewal of ICARE Program Participation. (1) At least sixty (60) days prior to the ICARE Program year renewal date, the department shall send a renewal notification to an ICARE Program participating employer.

(2) At least thirty (30) days prior to the ICARE Program year renewal date, an ICARE Program participating employer who desires continued participation in the ICARE Program shall submit to the department:

(a) A written request for renewal of ICARE Program participation;

(b) A complete ICARE Program renewal application; and

(c) Documentation to support eligibility as established in Section 2 of this administrative regulation and 2010 ES Ky Acts ch. 1, Part XII, secs. 1 through 8.

(3) A Kentucky licensed agent acting on behalf of an ICARE Program participating insurer shall assist in the submission of a renewal application for the ICARE Program by:

(a) Verifying that the employer has completed and submitted all required information to support eligibility for the ICARE Program;

(b) Completing section 3 of the ICARE Program renewal application of the employer; and

(c) If applicable:

1. Collecting employee ICARE Program high-cost condition certifications from employees, as identified in the ICARE Program application; and

2. Protecting personal health information as established in subparagraph 1 of this paragraph pursuant to 806 KAR 3:210 through 806 KAR 3:230.

(4) Within thirty (30) days of receiving a request for renewal, the department shall make a determination of continued eligibility for a subsequent ICARE Program year and notify the ICARE Program participating employer of the determination.

Section 5. Termination of ICARE Program Participation. (1) An ICARE Program participating employer shall be terminated from participation in the ICARE Program if:

(a) The department determines that the employer ceases to meet an eligibility requirement as established in Section 2 of this administrative regulation or 2010 ES Ky Acts ch. 1, Part XII, secs. 1 through 8:

1. Upon completion of an annual review for the ICARE Program year reviewed; or

2. Upon review of a request for renewal of ICARE Program Participation;

(b) The employer group's qualified health benefit plan coverage is terminated or not renewed pursuant to 2010 ES Ky Acts ch. 1, Part XII, sec. 4(5);

(c) The employer or any employee of the employer group performs an act or practice that constitutes fraud or intentionally misrepresents a material fact in the ICARE Program application;

(d) The employer requests termination from the ICARE Program;

(e) The employer ceases business operations in Kentucky; or

(f) The employer fails to cooperate in an annual review as described in Section 8 of this administrative regulation.

(2) Prior to terminating an ICARE Program participating employer, the department shall provide written notification to the employer, which shall include:

(a) The reason for termination as identified in subsection (1) of this section;

(b) The termination date, which shall be:

1. If terminated for fraud or misrepresentation, the date of the written notification; or

2. If terminated for a reason other than fraud or misrepresentation, no less than thirty (30) days from the date of the written notification; and

(c) Instructions for filing an appeal if dissatisfied with the termination.

Section 6. Reconsideration Requests and Appeals. (1) Within thirty (30) days of receiving notification of a determination of ineligibility pursuant to Section 4 of this administrative regulation or termination by the department pursuant to Section 5 of this administrative regulation, an employer may request a reconsideration of the determination of ineligibility or termination in writing. A request for reconsideration shall include: A description of the basis for reconsideration; and Any new relevant information including documentation to support eligibility as established in Section 2 of this administrative regulation and 2010 ES Ky Acts ch. 1, Part XII, secs. 1 through 8 that was not provided with the written request for renewal.

(2) The department shall provide written notification of its determination to the employer within sixty (60) days of receipt of a request for reconsideration from an employer.

(3) Within sixty (60) days of receiving the department's determination on reconsideration, the employer may appeal by filing a written application for an administrative hearing in accordance with KRS 304.2-310.

Section 7. ICARE Program Health Care Incentive Payment. (1) If confirmation of premium payment by the ICARE Program participating employer is included in the report required by 806 KAR 17:555, Section 5(4), a health care incentive payment shall be issued to the employer for each calendar month beginning with the month of enrollment of the employer in the ICARE Program.

(2) The department shall issue a health care incentive payment to an ICARE Program participating employer for each month in accordance with 2010 ES Ky Acts ch. 1, Part XII, sec. 4(1) for eligible employees enrolled in a qualified health benefit plan not to exceed the number of employees approved as eligible employees by the department based on the employer's ICARE Program application or ICARE Program renewal.

(3) The total amount of the monthly health care incentive payment provided to an employer may vary during the ICARE Program year based upon the number of eligible employees enrolled in the qualified health benefit plan as reported by the ICARE Program participating insurer.

(4) If an ICARE Program participating employer is terminated from the ICARE Program, the employer shall not be eligible for a monthly health care incentive payment following the effective date of termination for months remaining after the termination.

(5) If an ICARE Program participating employer is terminated from the ICARE Program due to fraud or material misrepresentation, the employer shall refund to the department all health care incentive payments received by the employer for the period of ineligibility determined by the department.

(6) Upon re-enrollment of an employer in the ICARE Program pursuant to Section 3(1)(c) of this administrative regulation, the employer shall receive a health care incentive payment amount that is equal to the health care incentive payment that the employer would have received at the time of renewal in accordance with 2010 ES Ky Acts ch. 1, Part XII, Sec. 4(1).

Section 8. Annual Review. The department may make or cause to be made an annual review of the books and records of an ICARE Program participating employer, insurer, or agent to ensure compliance with:

(1) 2010 ES Ky Acts ch. 1, Part XII, secs. 1 through 8; 806 KAR 17:540 and 17:555; and this administrative regulation; and

(2) The representations made by the employer on its application for participation in the ICARE Program.

Section 9. Response to Department Inquiry. If an employer receives an inquiry from the department relating to the eligible employer's participation or application in the ICARE Program, the eligible employer shall respond within fifteen (15) business days.

Section 10. Incorporation by Reference. (1) "ICARE-APP-1", 5/2011 [~~7/2010~~], 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. 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: June 14, 2011
FILED WITH LRC: June 15, 2011 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD:
A public hearing on this administrative regulation shall be held on July 27, 2011, at 9:00 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 July 20, 2011, 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 August 1, 2011. 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 application appeals process, annual review, health care incentive payment procedures, and the eligibility criteria for employers wishing to participate in the ICARE Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement HB 2, Section XII, enacted during the 2010 1st Extraordinary Session.

(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. HB 2, Section XII continues the ICARE Program as a pilot program for the next two fiscal years for employers whose applications were approved as of June 15, 2010, and requires the Department to establish by administrative regulation eligibility requirements for employers and employees to qualify for the ICARE Program. This administrative regulation establishes the application, appeal process, annual review, health care incentive payment procedures, and eligibility criteria for employers in the ICARE Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by further establishing eligibility requirements, the ICARE Program application, application and appeal processes, annual review and payment of health care incentives.

(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 incorporated renewal application to update the address for the ICARE Program, include the numerical phone number in addition to the acronym and to correct the wording of the initial paragraph.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to reference the new address for the ICARE Program on the renewal application.

(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 make reasonable rules and regulations necessary for the effectuation of any provision of the Kentucky Insurance Code. HB 2, Section XII continues the ICARE Program

as a pilot program for the next two fiscal years for employers who had an application approved by June 15, 2010. HB 2 further requires the Department to establish by administrative regulation eligibility requirements for employers and employees to qualify for the ICARE Program. The amendments to this administrative regulation correct the address of the ICARE Program on the incorporated material.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide the correct address for the return of renewal applications.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The ICARE Program is closed to new enrollment, but the approximately 400 existing members may continue their participation for four years. The technical amendments to this administrative regulation update the address as the ICARE Program offices have relocated.

(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: ICARE participating employers will continue to comply with the requirements of this administrative regulation to ensure renewal in the program and the continued receipt of health care incentive payments. Employers will be required to provide a written request for renewal, a renewal application, and supporting documentation in order to maintain eligibility in the ICARE Program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): These amendments are technical in nature and will not have a cost impact.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, participating employers will continue to receive the health care incentive payments afforded under the program.

(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 ICARE Program participants.

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, 2010 Extra. Sess. Ky. Acts ch. 1, Part XII, secs. 1-8, 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 regulation should not have an effect on the expenditures and revenues of a 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 should not generate revenue for state or local government 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 regulation should not generate revenue for state or local government in subsequent years.

(c) How much will it cost to administer this program for the first year? This regulation should not have a cost in the first year.

(d) How much will it cost to administer this program for subsequent years? This regulation should not have a cost in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The amendments to this administrative regulation simply update the ICARE Program's address on the incorporated documents. These changes will not have a fiscal impact.

ENERGY AND ENVIRONMENT CABINET
Public Service Commission
(Amendment)

807 KAR 5:076. Alternative rate adjustment procedure for small utilities.

RELATES TO: KRS Chapter 278.

STATUTORY AUTHORITY: KRS 278.030; KRS 278.040; KRS 278.160; KRS 278.180; KRS 278.185; KRS 278.190; KRS 278.310; KRS 278.380.

NECESSITY, FUNCTION AND CONFORMITY: This administrative regulation provides a simplified and less expensive procedure for [~~by which~~] small utilities to [~~may~~] apply to the commission for rate adjustments [~~increases~~]. A small utility may apply for rate adjustments using the formal procedure outlined in 807 KAR 5:001, Section 10 [~~Chapter 5~~] or by using the procedure prescribed in this administrative regulation which is intended to minimize the need for formal hearings, to reduce filing requirements, and ~~in many cases~~ to shorten the time period between application and commission order.

Section 1. Utilities Permitted to File Application. Any utility with [~~500 or fewer customers or~~] $5,000,000 [~~$300,000~~] or less gross annual revenue in the immediate past calendar year may apply for an adjustment of rates using the procedure in this administrative regulation [~~described below~~]. The applicant shall have maintained adequate financial records fully separated from any commonly-owned enterprise and shall have on file with the commission fully completed annual reports for the immediate past year and for the two (2) prior years if the applicant has been in existence that long.

Section 2. The Record upon which Decision Shall [~~Will~~] Be Made. Unless a hearing is held the commission shall make its decision based on the:

(1) [~~(a)~~] Annual reports of the applicant for the immediate past year and for the two (2) prior years, if the applicant has been in existence that long;

(2) [~~(b)~~] Application;

(3) [~~(c)~~] Information supplied by the applicant in response to requests for information submitted by other parties to the proceeding or [~~the intervenors and~~] the commission; [~~and~~]

(4) [~~(d)~~] Written reports submitted by commission staff; [~~subsequent to field review, if one (1) is conducted~~]

(5) Stipulations and agreements between the parties and commission staff; and

(6) Written comments and information that the parties to the proceeding submitted in response to the findings and recommendations contained in any written report that commission staff submitted.

Section 3. Application. (1) An application for alternative rate adjustment shall consist of:

(a) A completed alternative rate adjustment application form that is made under oath and signed by the applicant or an officer who is duly designated by the applicant and who has knowledge of the matters set forth in the application;

(b) A copy of all outstanding evidences of indebtedness, such as mortgage agreements, promissory notes, and bond resolutions;

(c) A copy of the amortization schedule for each outstanding bond issuance, promissory note, and debt instrument;

(d) A depreciation schedule of utility plant in service;

(e) A copy of the most recent state and federal tax returns of the applicant, if applicant is required to file returns;

(f) An analysis of customers' bills in such detail that revenues from the present and proposed rates can be readily determined for each customer class;

(g) A copy of the notice of the proposed rate change that is provided to customers of the applicant; and,

(h) If the applicant is a corporation or a limited liability company, a certified copy of its articles of incorporation and all amendments thereto, or a written statement attesting that its articles and all amendments thereto have been filed with the commission in a prior proceeding and referencing the style and case number of the prior proceeding.

(2) Unless electronic filing procedures are used, the applicant shall submit one (1) original and five (5) paper copies of its application to the executive director of the commission.

(3) When submitting its application to the commission, the applicant shall also deliver or mail one (1) paper copy to the Office of Rate Intervention, Office of the Attorney General, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601-8204 or transmit by electronic mail an electronic copy in portable document format to the Office of Rate Intervention at rintervention@ag.ky.gov.

(4)(a) If the application contains certain personal data, including an individual's social security number, taxpayer identification number, birth date, or a financial account number, the applicant shall redact the document so the following information cannot be read:

1. the digits of the Social Security number or taxpayer identification number;

2. the month and day of an individual's birth; and

3. the digits of the financial account number.

(b) Redaction may be made by any method, including but not limited to replacing the identifiers with neutral placeholders or covering the identifiers with an indelible mark, that so obscures the identifiers that they cannot be read.

(5) The application shall not contain any request for relief from the commission other than an adjustment of rates.

(6) An applicant may make written request to the executive director for commission staff assistance in preparing the application. ~~The applicant shall obtain from the Executive Director of the Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601, the alternative rate adjustment application form. The applicant shall complete the form, attach any documents requested and a copy of the notice of the proposed rate change that it provided to its customers, and submit one (1) original and ten (10) copies to the executive director of the commission and one (1) copy to the Public Service Litigation Branch, Office of the Attorney General, P.O. Box 2000, Frankfort, Kentucky 40602-2000, together with one (1) copy of each of the three (3) annual reports. An applicant may, in writing, request commission assistance in preparing the application.~~]

Section 4. Notice to Customers of Proposed Rate Changes. (1) If the applicant has twenty (20) or fewer customers or is a sewer utility, it shall mail written notice of the proposed rate changes [~~and the estimated amount of increase per customer class~~] to each customer no later than the date on which the application is filed with the commission. In addition, the applicant shall post at its place of business no later than the filed date of the application a sheet containing the information provided in the written notice to its customers and shall keep this notice posted until the commission has issued a final decision on the application.

(2) An [~~Except for sewer utilities, which must give notice pursuant to KRS 278.185, an~~] applicant that has [~~with~~] more than twenty (20) customers and is not a sewer utility shall post at its place of business a sheet containing the information provided in the notice to its customers [~~post a sheet stating the proposed rates and the estimated amount of increase per customer class at its place of business;~~] and shall:

(a) Include notice with customer bills mailed by the date the application is filed; or

[~~(b) Publish notice in a trade publication or newsletter that will be received by all customers by the date the application is filed; or~~]

(b) [~~(c)~~]Publish notice once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in its service area, the first publication to be made by the date the application is filed.

(3) Each notice shall contain the following information:

(a) The amount of the change requested in both dollar amounts and percentage change for each customer classification to which the proposed rate change will apply;

(b) The present rates and the proposed rates for each customer class to which the proposed rates will apply;

(c) The effect upon the average bill for each customer class to which the proposed rate change will apply;

(d) A statement that the rates contained in this notice are the rates proposed by (name of utility) but that, the Public Service Commission may order rates to be charged that differ from the proposed rates contained in this notice;

(e) A statement that any corporation, association, or person with a substantial interest in the matter may, by written request, within thirty (30) days after publication or mailing of this notice of the proposed rate changes request to intervene; intervention may be granted beyond the thirty (30) day period;

(f) A statement that copies of the application may be obtained at no charge from (the name of the utility) at (the utility's address) and that the application and all documents filed with the Public Service Commission may be viewed and downloaded at the Public Service Commission's Web site - http://psc.ky.gov/ [~~language: The rates contained in this notice are the rates proposed by (name of utility). However, the Public Service Commission may order rates to be charged that are higher or lower than the rates proposed in this notice. Any corporation, association, body politic or person may request leave to intervene by motion within thirty (30) days after notice of the proposed rate changes is given. A motion to intervene shall be in writing, shall be submitted to the Executive Director, Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, and shall set forth the grounds for the motion, including the status and interest of the party movant. Copies of the application may be obtained at no charge from (the applicant) at (the applicant's address). Upon request from an intervenor, the applicant shall furnish to the intervenor a copy of the application and supporting documents."~~].

(4) Proof of notice. An applicant shall file with the commission no later than forty-five (45) days from the filed date of the application:

(a) If its notice is published, an affidavit from the publisher verifying the notice was published, including the dates of the publication with an attached copy of the published notice;

(b) If the notice is mailed, a written statement signed by the utility's chief executive officer verifying the notice was mailed.

(5) If an applicant maintains a Web site, the applicant shall post on its website within seven (7) days of the filed date of the application a notice containing the information provided in the written notice to its customers and a link to a copy of its application posted on the commission's Web site and shall keep both posted until the commission has finally determined the utility's rates.

Section 5. Except as provided in Section 11 of this administra-

tive regulation, no applicant shall be required to provide the commission with advance notice of its intent to file an application for rate adjustment using the procedure set forth in this administrative regulation.

Section 6. Effective Date of Proposed Rates. No applicant may place its proposed rates into effect until the commission has issued an order approving those rates or six (6) months from the date of filing of its application, whichever occurs first. If the commission has not issued its order within six (6) months from the date of filing of the application, the applicant may place its proposed rates in effect subject to refund upon providing the commission with written notice of its intent to place the rates into effect. The applicant shall maintain its records in a manner to enable it, or the commission, to determine the amounts to be refunded and to whom is due a refund if the commission orders a refund. [~~Motion for Formal Hearing. Within ninety (90) days after the application has been filed, any party may file a written request for a formal hearing setting forth grounds therefore~~].

Section 7. Test Period. The reasonableness of the proposed rates shall be determined using a twelve (12) month historical test period, adjusted for known and measureable changes, that coincides with the reporting period of the applicant's most recent annual report on file with the commission.

Section 8. Discovery. Unless the commission otherwise directs, a party may serve written requests for information upon the applicant within twenty-one (21) days of an order permitting that party to intervene in the proceeding. At the time of serving its request upon the applicant, the party shall also file a copy of its request with the commission and serve a copy upon all other parties. Within twenty-one (21) days of service of timely requests for information from a party, the applicant shall serve its written responses upon each party and shall file with the commission one (1) original and five (5) copies. Nothing in this section shall preclude the commission from establishing different arrangements for discovery.

Section 9. Commission Staff Report. Unless the commission directs otherwise,

(1) Commission staff shall prepare and file with the commission and serve a copy on all parties of record a report on the application that contains its findings and recommendations regarding the proposed rates.

(2) Each party shall file with the commission a written response to the report within fourteen (14) days of the filing of the report. This written response shall contain all objections to and other comments on the findings and recommendations of commission staff, any request for hearing or informal conference, and the reasons why a hearing or informal conference is necessary. If a party fails to file a written response with the commission within this time period, it shall be deemed to have waived any objections to the findings and recommendations contained in the report and any right to a hearing on the application.

Section 10 [~~6~~]. Notice of Hearing. If the commission orders a hearing, the applicant shall publish in a newspaper or mail to its customers notice of the hearing ~~give notice as required by KRS 424.300~~. The notice shall state the purpose, time, place, and date of the hearing. Newspaper notice shall be published once in a newspaper of general circulation in the applicant's service area no fewer than seven (7) and no more than twenty-one (21) days prior to the hearing. [~~The notice shall state the purpose, time, place, and date of the hearing.~~]

Section 11. Utility Personnel Participation in Commission Proceedings. (1) An authorized official or employee of the applicant who is not licensed to practice law in Kentucky may on behalf of an applicant that is a corporation, partnership, or limited liability company file the application, responses to commission orders and requests for information, as well as appear at conferences related to the application.

(2) Any applicant that is a corporation, partnership, or limited liability company shall at any hearing conducted on the application be represented by an attorney who is authorized to practice law in Kentucky.

Section 12. Use of Electronic Filing Procedures in lieu of Submission of Paper Documents. An applicant may elect to use electronic filing procedures in lieu of submission of paper documents to the commission. At least seven (7) days prior to the submission of its application, an applicant shall file with the commission written notice of its election and, if it does not have an account for electronic filing with the Commission, register for an account at http://psc.ky.gov/Account/Register. Upon electing the use of electronic filing procedures, the following procedures shall be followed in the commission proceeding on the application unless the commission orders otherwise:

(1) All pleadings, documents, and exhibits shall be filed with the commission by uploading an electronic version of the document using the commission's E-Filing System at http://psc.ky.gov. In addition, the filing party shall file one (1) original and one (1) paper copy with the commission.

(2) Each file in an electronic submission shall be:

(a) in portable document format;

(b) search-capable;

(c) optimized for viewing over the Internet;

(d) where appropriate, bookmarked to distinguish sections of the pleading or document; and,

(e) if a scanned document, scanned at a resolution of 300 dots per inch.

(3) All electronic submissions shall include an introductory file in portable document format that is named "Read1st" and that contains a general description of the filing, a list of all materials not included in the electronic filing, and a statement attesting that the electronically filed documents are a true representation of the original documents. The "Read1st" file and any other document that normally contains a signature shall contain a signature in the electronically submitted document. The electronic version of the cover letter accompanying the paper filing may be substituted for a general description. If the electronic submission does not include all documents contained in the paper version (e.g., confidential materials, materials that are too large or bulky to transfer by electronic medium), the absence of these documents shall be noted in the "Read1st" document.

(4) An electronic transmission or uploading session shall not exceed twenty (20) files. An individual file shall not exceed fifty (50) megabytes. If a filing party's submission exceeds these limitations, the filer shall make its electronic submission in two (2) or more consecutive electronic transmission or uploading sessions.

(5) When filing any document with the commission, the filing party shall certify that:

(a) The electronic version of the filing is a true and accurate copy of the document(s) filed in paper medium;

(b) The electronic version of the filing has been transmitted to the commission; and

(c) A copy of the filing in paper medium has been mailed to all parties that the commission has excused from participation by electronic means.

(6) Upon completion of a party's uploading of an electronic submission, the commission shall cause an electronic mail message to be sent to all parties of record advising that an electronic submission has been made to the commission. Upon a party's receipt of this message, it shall be the receiving party's responsibility to access the commission's electronic file depository at http://psc.ky.gov and view or download a copy of the submission.

(7) Unless it states its objection to the use of electronic filing procedures in its motion for intervention, a party granted leave to intervene shall be deemed to have consented to the use of electronic filing procedures and the service of all documents and pleadings, including orders of the commission, by electronic means and shall file with the commission within seven (7) days of the date of an order of the commission granting its intervention a written statement that it waives any right to service of commission orders by United States mail and that it, or its authorized agent, possesses the facilities to receive electronic transmissions.

(8) If a party objects to the use of electronic filing procedures and the commission determines that good cause exists to excuse

that party from the use of electronic filing procedures, service of documents on that party and by that party shall be made in accordance with 807 KAR 5:001.

(9) A document shall be considered timely filed with the commission if it has been successfully transmitted in electronic medium to the commission within the time allowed for filing. The original document, in paper medium, shall be filed at the commission's offices no later than the second business day following the electronic filing. Parties shall attach to the top of such submission a paper copy of the electronic mail message from the commission confirming transmission and receipt of its electronic submission.

Section 13. The provisions of 807 KAR 5:001 that do not conflict with the provisions of this administrative regulation shall apply to commission proceedings involving applications filed pursuant to this administrative regulation.

Section 14 [~~7~~]. Upon a showing of good cause, the commission may permit deviations from this administrative regulation.

Section 15. Incorporation by Reference. (1) "Application For Rate Adjustment Before The Public Service Commission For Small Utilities Pursuant to 807 KAR 5:076," June 15, 2011, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law at the commission's offices at 211 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at http://psc.ky.gov/.

DAVID L ARMSTRONG, Chairman
LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: June 13, 2011

FILED WITH LRC: June 14, at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 25, 2011, at 9:30 a.m., Eastern Daylight Time, at the Public Service Commission's office, 211 Sower Boulevard, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 18, 2011, 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 attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 1, 2011. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Gerald E. Wuetcher, Executive Advisor/Attorney, Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, phone (502) 564-3940, fax (502) 564-7279.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gerald E. Wuetcher

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides a simplified and less expensive procedure by which small utilities may apply to the commission for rate increases. A small utility may apply for rate adjustments using the formal procedure outlined in 807 KAR 5:001 or by using the procedure prescribed in this administrative regulation, which is intended to minimize the need for formal hearings, to reduce filing requirements, and to shorten the time period between application and commission order.

(b) The necessity of this administrative regulation: This regulation will assist the Public Service Commission in timely reviewing applications for rate adjustment, will reduce the expense of rate case proceedings, and is necessary to the Public Service Commission's authority to regulate the rates of small utilities. It provides a structural framework for using electronic filing procedures for small utility rate cases.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 278.030 permits utilities to demand and collect fair, just, and reasonable rates for services. KRS 278.040 confers exclusive jurisdiction on the Public Service Commission to regulate the rates and services of all utilities. KRS 278.160 requires all utilities to file their rate schedules with the Public Service Commission and to charge only rates that are filed with the Public Service Commission. KRS 278.180 -.192 provides a framework for utility rate adjustments. 807 KAR 5:076 permits a simplified and relatively inexpensive means for smaller utilities to obtain Public Service Commission approval of such adjustments and thus charge fair, just, and reasonable rates that reflect the actual cost of service.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides a more cost effective and simplified means for small utilities to apply for rate adjustments. It provides clear guidance to small utilities on the documents necessary for a rate adjustment and simplifies the procedures necessary for a rate adjustment.

(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 expand eligibility to use simplified filing procedures from 107 utilities to 240 utilities. Eligibility requirements, which have been unchanged for more than 15 years, have been revised to reflect the effects of inflation. Elimination of the eligibility provisions related to the number of customers will prevent two electric cooperatives, each of which has annual revenues in excess of $340,000,000, from using the simplified filing procedures. The amendment clarifies the record upon which the Public Service Commission should base its decision. It specifies actions that applicants should take to protect sensitive personal information that may be contained in such applications. It amends the notice requirements for rate adjustments to conform to the notice requirements in 807 KAR 5:001 and 807 KAR 5:011. It clarifies when a small utility using alternative rate filing procedures may place its proposed rates into effect if the commission fails to make a timely decision. It provides a formal framework for the use of electronic filing procedures and establishes a schedule for discovery and responses to commission staff reports. The regulation eliminates the need for an applicant to include within its application, copies of its annual reports, which are currently on file with the Public Service Commission, and reduces the number of copies of the application that must be filed.

(b) The necessity of the amendment to this administrative regulation: Eligibility requirements for alternative rate filing procedures had not been adjusted for the effects of inflation for 15 years. Current Public Service Commission regulations make no provision for the use of electronic procedures. Provisions in the proposed amendment that are related to discovery and to the record upon which the Commission will base its decision are not addressed in existing regulation and will incorporate Public Service Commission practices developed since the regulation's last amendment in 1996.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 278.030 permits utilities to demand and collect fair, just, and reasonable rates for services. KRS 278.040 confers exclusive jurisdiction on the Public Service Commission to regulate the rates and services of all utilities. KRS 278.160 requires all utilities to file their rate schedules with the Public Service Commission and to charge only rates that are filed with the Public Service Commission. KRS 278.180 -.192 provides a framework for utility rate adjustments. 807 KAR 5:076 permits a simplified and relatively inexpensive means for smaller utilities to obtain Public Service Commission approval of such adjustments and thus charge fair, just, and reasonable rates that reflect the actual cost of service. The proposed amendment eliminates inefficiencies in the rate adjustment process and reduces transactional costs for small utilities that are less able to afford large rate case expenses and that have less expertise in the ratemaking process than larger utilities.

(d) How the amendment will assist in the effective administration of the statutes: Amendment expands the eligibility of alterna-

tive rate filing procedures and will allow 133 additional utilities to take advantage of simplified and less costly review procedures. It implements new measures for the protection of sensitive personal information contained in applications, reduces the documents that must be filed with the Public Service Commission and served upon other parties, and allows for the use of electronic filing and notification procedures that are expected to decrease the time and expense necessary to adjudicate rate adjustment applications.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The proposed amendment will affect 240 water, natural gas, and sewer utilities whose annual gross revenues are $5 million or less and their customers. The proposed amendment will remove two (2) electric utilities, whose gross annual revenues exceed $340,000,000, from eligibility for alternative rate filing procedures. Neither electric utility has used alternative rate filing procedures to adjust its rates.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is necessary. This amendment enlarges eligibility for alternative rate filing procedures. The use of alternative rate filing procedures is entirely voluntarily. The affected utilities may continue to use the rate filing procedures set forth in 807 KAR 5:001 in lieu of the alternative rate filing procedures.

(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 costs to comply. The affected utilities may continue to use the rate filing procedures set forth in 807 KAR 5:001 in lieu of the alternative rate filing procedures. Because the amendment will reduce the number of documents that must be filed and allows for the use of electronic transmission of documents in lieu of service of paper documents, the amendment should reduce the cost of filing an application for rate adjustment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The proposed Amendment will reduce the time necessary for review of rate case applications and the cost of rate case proceedings and thus lessen or reduce rate adjustments. It should enhance public awareness of utility rate adjustment applications made by small utilities. It provides greater certainty and stability in the ratemaking process that the Public Service Commission uses for small utilities. The proposed amendment generally reflects ad hoc practices with which the Public Service Commission has employed over several years and which it found improved and shortened the review process.

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

(a) Initially: Implementation of the proposed amendment will not involve additional costs.

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

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

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

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

(9) TIERING: Is tiering applied? To the extent that the regulation establishes simplified procedures for utilities with annual revenues of less than $5 million, tiering has been applied. The Public Service Commission believes that tiering is appropriate because the operations of smaller utilities are less complex, their recordkeeping practices are simpler, and the amount of documentary evidence to verify their financial operations is less than that of larger utilities. Moreover, given the smaller number of customers over which small utilities must spread rate case expense, the use of the same procedures as used for larger utilities will result in larger rate increases for smaller utilities.

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? Public Service Commission; Office of Attorney General (Utility Rate and Intervention Division); water districts

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 278.030 permits utilities to demand and collect fair, just, and reasonable rates for services. KRS 278.040 confers exclusive jurisdiction on the Public Service Commission to regulate the rates and services of all utilities. KRS 278.160 requires all utilities to file their rate schedules with the Public Service Commission and to charge only rates that are filed with the Public Service Commission. KRS 278.180 -.192 provides a framework for utility rate adjustments. 807 KAR 5:076 permits a simplified and relatively inexpensive means for smaller utilities to obtain Public Service Commission approval of such adjustments and thus charge fair, just, and reasonable rates that reflect the actual cost of service.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No direct increase in revenue will result from the adoption of the proposed amendment for any governmental agency. The proposed amendment does not provide for the Public Service Commission to assess any fee or charge. While the proposed amendment may allow for water districts to more easily obtain rate adjustments, water districts would have been able to obtain same level of rate adjustment if the proposed amendment is not enacted.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No direct increase in revenue will result from the adoption of the proposed amendment for any governmental agency. The proposed amendment does not provide for the Public Service Commission to assess any fee or charge. While the proposed amendment may allow for water districts to more easily obtain rate adjustments, water districts would have been able to obtain same level of rate adjustment if the proposed amendment is not enacted.

(c) How much will it cost to administer this program for the first year? No increase in the Public Service Commission's cost of reviewing applications for rate adjustment or otherwise regulate small public utilities is expected to result from the adoption of the proposed amendment. The Public Service Commission will be performing the same level of review and require the same number of employees to conduct its review. Water districts that are currently ineligible to use the procedures in 807 KAR 5:076 but that will be eligible if the proposed amendment is adopted will experience lower rate case expenses when filing for rate adjustments as they will file fewer documents with their application and may be able to avoid the need to retain rate case consultants and other professionals to prepare and support their application. The exact amount of any savings is too difficult to quantify.

(d) How much will it cost to administer this program for subsequent years? No increase in the Public Service Commission's cost of reviewing applications for rate adjustment or otherwise regulate small public utilities is expected to result from the adoption of the proposed amendment. The Public Service Commission will be performing the same level of review and require the same number of employees to conduct its review. Water districts that are currently ineligible to use the procedures in 807 KAR 5:076 but that will be eligible if the proposed amendment is adopted will experience lower rate case expenses when filing for rate adjustments as they will file fewer documents with their application and may be able to avoid the need to retain rate case consultants and other profes-

sionals to prepare and support their application. The exact amount of any savings is too difficult to quantify.

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
Kentucky State Board on Electric Generation and Transmission Siting
(Amendment)

807 KAR 5:100. Board application fees.

RELATES TO: KRS 278.702, 278.704, 278.706, 278.708, 278.710, 278.712, 278.714, 278.716, and 2011 Ky. Acts ch. 82, sec. 6

STATUTORY AUTHORITY: [~~KRS 278.040(3)~~] KRS 278.702(3), 278.706(3), 278.706(5) and 278.714(6)

NECESSITY, FUNCTION, and CONFORMITY: KRS 278.702 creates the Kentucky State Board on Electric Generation and Transmission Siting. KRS 278.702(3) directs the permanent members of the board to promulgate administrative regulations in accordance with KRS Chapter 13A to implement KRS 278.700 to 278.716. KRS 278.706(3)provides that application fees for a construction certificate shall be set by the board and deposited into a trust and agency account to the credit of the Kentucky Public Service Commission. KRS 278.706(5) directs the board to promulgate administrative regulations establishing fees to cover the expenses associated with review of applications filed pursuant to KRS [~~278.704~~] 278.700 to 278.716. KRS 278.706(5) provides that, if a majority of the members of the board find that an applicant's initial fees are insufficient to pay the board's expenses for review of the application, including the board's expenses associated with legal review of the application, the board shall assess a supplemental application fee to cover the additional expenses. An application filed with the board concerns: (1) construction of a merchant electricity generating plant; (2) transfer of authority to construct and operate a merchant electricity generating plant; [~~or~~] (3) construction of a nonregulated transmission line; or (4) construction of a carbon dioxide transmission pipeline. KRS 278.706(5) provides that an applicant's failure to pay a fee assessed pursuant to KRS 278.706 shall be grounds for denial of the application. KRS 278.714(6) directs the board to promulgate administrative regulations to establish an application fee for a construction certificate for nonregulated electric transmission lines and carbon dioxide transmission pipelines. This administrative regulation establishes an initial application fee for each type of application filed with the board and specifies the method by which a supplemental fee may be assessed.

Section 1. Application Fee to be Filed with an Application to Construct a Merchant Electricity Generating Plant. A person seeking to obtain a certificate to construct a merchant electricity generating plant shall submit with its application to the Kentucky State Board on Electric Generation and Transmission Siting, at the offices of the Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky, an initial application fee of $1,000 per megawatt of electricity generating capacity, based on the manufacturer's nameplate rated capacity of the proposed construction, except that the initial application fee for each application for each plant shall be in an amount not less than $40,000 and not more than $200,000.

Section 2. Application Fee to be Filed with an Application to Construct a Nonregulated Transmission Line. A person seeking board approval of construction of a nonregulated transmission line shall file with its application to the board a fee of fifty (50) dollars per kilovolt of rated capacity per mile of length, except that the initial application fee shall be in an amount not less than $10,000 and not more than $200,000.

Section 3. Application Fee to be Filed with an Application to Construct a Carbon Dioxide Transmission Pipeline. A person seeking board approval of construction of a carbon dioxide transmission pipeline shall file with its application to the board a fee of $500 per mile of length, except that the initial application fee shall be in an amount not less than $10,000 and not more than $200,000.

Section [~~3~~] 4. Application Fee to be Filed with an Application to Transfer a Certificate to Construct a Merchant Electricity Generating Facility. A person seeking board approval to transfer any right or obligation associated with a certificate granted by the board to construct a merchant electricity generating facility shall file with its application to the board, at the offices of the Kentucky Public Service Commission, at 211 Sower Boulevard, Frankfort Kentucky, an initial application fee of $5,000.

Section [~~4~~] 5. Supplemental Application Fee. No sooner than thirty (30) days after an application has been filed and no later than sixty (60) days after issuance of the board's final decision on an application or, if an applicant has sought judicial review in accordance with KRS 278.712(5), no later than sixty (60) days after all appeals of the board's decision have been exhausted, the board may assess a supplemental application fee to cover an expense related to review of an application filed pursuant to KRS 278.704, 278.710, or 278.714, for which the initial application fee is insufficient. The supplemental fee shall be assessed by order containing an accounting of each expense for which the supplemental fee is assessed.

Section [~~5~~] 6. Refund. No later than sixty (60) days after issuance of the board's final decision on an application or, if judicial review has been sought, no later than sixty (60) days after all appeals of the board's decision have been exhausted, the board shall refund to the applicant any amount paid which exceeds the amount expended by the board.

DAVID L. ARMSTRONG, Chairman

APPROVED BY AGENCY: June 13, 2011

FILED WITH LRC: June 14, 2011 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 25, 2011 at 10:00 a.m. at the Public Service Commission's office, Hearing Room 2, 211 Sower Boulevard, Frankfort, Kentucky 40602. Individuals interested in attending this hearing shall notify this agency in writing by July 18, 2011, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled.

This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 1, 2011. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Quang Nguyen, Public Service Commission, P.O. Box 615, Frankfort, Kentucky 40602-0615, phone (502) 564-3940, fax (502) 564-3460.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Quang Nguyen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes fees related to applications filed under the jurisdiction of the Kentucky State Board on Electric Generation and Transmission Siting (Siting Board or Board).

(b) The necessity of this administrative regulation: This administrative regulation establishes the initial filing fee for an application with the Siting Board for a construction certificate for a carbon dioxide transmission pipeline pursuant to KRS 278.714.

(c) How this administrative regulation conforms to the content

of the authorizing statutes: Pursuant to KRS 278.706(5), this administrative regulation establishes the initial filing fee for an application with the Siting Board for a construction certificate for a carbon dioxide transmission pipeline pursuant to KRS 278.714. Pursuant to Senate Bill 50 (2011 Ky. Acts ch. 82, sec. 6), the Board was given jurisdiction over the siting of carbon dioxide transmission pipelines in Kentucky, in addition to its existing authority over the siting of merchant electric generating facilities and nonregulated electric transmission lines.

(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 implementation of the statutes by ensuring that the Siting Board's expenses for reviewing an application for a carbon dioxide transmission pipeline are funded by an appropriate application fee, as mandated by KRS 278.706(5). If, pursuant to KRS 278.714(1) (as amended by 2011 Ky. Acts ch. 82, sec. 6) the Board hires a consultant to review a carbon dioxide transmission pipeline application, the filing fee pays for the cost of the consultant's review and report. It is anticipated that a consultant's report for a carbon dioxide transmission pipeline could cost between $20,000 and $50,000 (or more), depending upon the length of the proposed pipeline and the complexity of the issues presented by the proposed route. The filing fee also funds Staff salaries, travel expenses for the Board and Staff to review the proposed route and conduct a local public hearing, and all other miscellaneous expenses (printing, postage, etc.) associate with review of an application. The costs associated with litigating an appeal of a Siting Board final order are also funded by the application fee. Pursuant to 807 KAR 5:100, Section 4, the Board can assess a supplemental filing fee if the expenses for reviewing the application or for conducting any subsequent appeals litigation are greater than the initial filing fee. If any amount of the filing fee deposited by the applicant is not expended by the Board in its review of the application or in any appeal, the Board must refund the remaining filing fee to the applicant within 60 days of the issuance of the final order (or 60 days after all appeals of a final order have been exhausted) pursuant to 807 KAR 5:100, Section 5.

(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 amended Section 3 will establish an initial filing fee of $500 per mile of carbon dioxide transmission pipeline, as specified in the application, with a minimum fee of $10,000 and a maximum fee of $200,000. The "Relates To" section is amended to add "KRS 278.708" and "KRS 278.716" which were not previously included in the regulation for unknown reasons, as these statutes are also related to the substance of the regulation and are mentioned in the body of the regulation. The "Relates To" section is further amended to include "Ky. Acts ch. 82, sec. 6" as the authority to establish a filing fee for carbon dioxide transmission pipeline applications is contained in Senate Bill 50, which was passed during the 2011 Regular Session and signed into law on March 16, 2011. That law has not yet been codified in the Kentucky Registered Statutes. Therefore, in compliance with KRS 13A.222(4)(m)2, the reference to 2011 Ky. Acts ch. 82, sec. 6 is included herein. In compliance with KRS 13A.222(4)(m)3, the Siting Board will notify the regulations compiler of the proper citation of the Kentucky Revised Statutes in writing once the law is codified in the Kentucky Registered Statutes, at which time the regulations compiler should eliminate the reference to 2011 Ky. Acts ch. 82, sec. 6, as that law amended existing statutes which are already referenced in the "Relates To" section.

The "Statutory Authority" section is amended to eliminate "KRS 278.040(3)," which provides authority to the *Public Service Commission* to adopt regulations in conformity with KRS Chapter 13A. 807 KAR 5:100 is a regulation under the jurisdiction of the Siting Board, not the Public Service Commission. KRS 278.702(3) provides authority to the Siting Board to adopt reasonable regulations in accordance with KRS 278.700 to 278.716. Therefore, "KRS 278.702(3)" is added to the "Statutory Authority" section in order to properly reflect the appropriate statutory authority. "KRS 278.706(3)" and "KRS 278.714(6)" are also added to the "Statutory Authority" section, as each of those statutes also provides authorization to the board to promulgate regulations regarding filing fees.

The "Necessity, Function, and Conformity" section is also amended to delete "KRS 278.704" and to substitute "KRS 278.700 to 278.716," in order to conform to the language in KRS 278.706(5), which mandates that filing fees be established for all applications "filed…pursuant to KRS 278.700 to 278.716," not just applications filed under KRS 278.704, as the regulation is currently worded. The "Necessity, Function, and Conformity" section is further amended to include "construction of a carbon dioxide transmission pipeline" among the items for which an application may be filed with the Board. In addition, the section numbers following the new Section 3 are renumbered.

(b) The necessity of the amendment to this administrative regulation: Without adding a new section establishing the initial application fee for an application for a carbon dioxide transmission pipeline the Siting Board would have no filing fee funds with which to carry out its review of such applications. The additional changes to the regulation are required in order to reflect the appropriate statutory authority under which the regulation is promulgated and in order to renumber the sections of the regulation following the addition of the new Section 3.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 278.706(5) mandates that the Board promulgate administrative regulations prescribing filing fees that must be used to pay the expenses associated with the Board's review of all applications filed pursuant to KRS 278.700 to 278.716. This regulatory amendment adds a filing fee for applications for carbon dioxide transmission pipelines, which were placed under the Siting Board's jurisdiction by 2011 Ky. Acts ch. 82, sec. 6.

(d) How the amendment will assist in the effective administration of the statutes: Under the current administrative regulation, there is no filing fee for a carbon dioxide transmission pipeline application. This amendment will provide a reasonable filing fee pursuant to KRS 278.706(5), which will allow the Siting Board to fund its review of such applications and any further judicial review made necessary by an appeal of a final order in such cases.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all individuals, businesses, organizations, and other entities that seek to construct merchant electric generation facilities capable of operating at a capacity of 10 MW or greater, nonregulated electric transmission lines capable of operating at or above 69 kilovolts, or carbon dioxide transmission pipelines of any size within the boundaries of the Commonwealth of Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The proposed administrative regulation will impact any party that files an application for a construction certificate for a carbon dioxide transmission pipeline with the Siting Board. The applicant will have to submit a filing fee along with the application in an amount as calculated by the number of miles of pipeline proposed in the application times $500, but no less than $10,000 and no greater than $200,000.

(b) In complying with this administrative regulation or amendment, how much will

it cost each of the entities identified in question (3): Between $10,000 and $200,000, depending on the length of the proposed pipeline.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The applicants will be ensured that the Siting Board will have the appropriate resources necessary to provide timely review of their applications for construction certificates.

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

(a) Initially: Implementation of the administrative regulation does not involve costs in addition to those already implicated by statutory requirements.

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

(6) What is the source of the funding to be used for the imple-

mentation and enforcement of this administrative regulation? No additional funding is required.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Yes, it establishes a filing fee for carbon dioxide transmission pipeline applications before the Siting Board.

(9) TIERING: Is tiering applied? Tiering is not used in this proposed amendment. This amendment applies equally to all applicants for a certificate from the Siting Board, because there is no rational need to provide for different levels of filing fees for applicants seeking a construction certificate for a carbon dioxide transmission pipeline, as the Siting Board's review of such applications will be based on the same criteria regardless of who the applicant may be, and the applicants for such construction certificates will be companies or corporations which, pursuant to KRS 154.27-020(4)(f) (as amended by Senate Bill 50) must make a minimum capital investment of fifty million dollars ($50,000,000) in order to qualify for the incentives under the Incentives for Energy Independence Act. All companies or corporations having the ability to make a capital investment of at least $50 million dollars should have the ability to pay a filing fee under the amended regulation which will amount to a minor fraction of the total expense for the pipeline project. Therefore, tiering principles do not apply.

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 proposed administrative regulation will impact any party that files an application for a construction certificate for a carbon dioxide transmission pipeline.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 278.702(3), 278.706(5), 278.714 and 2011 Ky. Acts ch. 82, sec. 6.

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

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

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

(c) How much will it cost to administer this program for the first year? Nothing.

(d) How much will it cost to administer this program for subsequent years? Nothing.

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

Revenues (+/-): -0-

Expenditures (+/-): -0-

Other Explanation:

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Kentucky State Board on Electric Generation and Transmission Siting
(Amendment)

807 KAR 5:110. Board proceedings.

RELATES TO: KRS [~~278.702(3)~~] 278.702, 278.704, 278.706, 278.708, 278.710, 278.712, 278.714, 278.716, and 2011 Ky. Acts ch. 82, sec. 6

STATUTORY AUTHORITY: [~~KRS 278.040(3)~~] KRS 278.702(3)

NECESSITY, FUNCTION, and CONFORMITY: KRS 278.702 creates the Kentucky State Board on Electric Generation and Transmission Siting. KRS 278.702(3) requires the board to promulgate administrative regulations to implement KRS 278.700 to 278.716. KRS 278.712(2) requires the board to promulgate administrative regulations governing a board hearing. KRS 278.706(2)(c) requires an applicant seeking to obtain a construction certificate from the board to give proper notice of his intention to the public. This administrative regulation establishes procedures related to applications, filings, notice requirements, hearings, and confidential material.

Section 1. General Matters Pertaining to All Formal Proceedings. (1) Address of the board. Written communication may be addressed to "Kentucky State Siting Board on Electric Generation and Transmission Siting, 211 Sower Boulevard, PO Box 615, Frankfort, Kentucky [~~40601~~] 40602-0615".

(2) Form of papers filed. A pleading in a formal proceeding shall be printed or typewritten on one (1) side of the paper only, and typewriting shall be double-spaced.

(3) Signing of pleadings. Every pleading of a party represented by an attorney shall be signed by at least one (1) attorney of record in his individual name and shall state his address.

(4) Service of process. If a party has appeared by attorney, service upon the attorney shall be deemed proper service upon the party.

(2) Form of papers filed. A pleading in a formal proceeding shall be printed or typewritten on one (1) side of the paper only, and typewriting shall be double-spaced.

(3) Signing of pleadings. Every pleading of a party represented by an attorney shall be signed by at least one (1) attorney of record in his individual name and shall state his address.

(4) Service of process. If a party has appeared by attorney, service upon the attorney shall be deemed proper service upon the party.

Section 2. Notice of Intent to File Application. (1) At least thirty (30) days but no more than six (6) months prior to filing an application to construct a carbon dioxide transmission pipeline, merchant electricity generating plant or nonregulated electric transmission line, an applicant shall file at the offices of the Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky [~~40601~~] 40602, a Notice of Intent to File Application. If an applicant fails to file an application within six (6) months of the filing of such a Notice, the Notice shall automatically expire without further notice to the applicant.

(2) A Notice of Intent to File Application shall include:

(a) The name, address, and telephone number of the person who intends to file the application;

(b) A brief description of the proposed construction that will be the subject of the application;

(c) A description of the location of the proposed construction, including:

1. The name of the city and county in which the construction will be proposed;

2. The street address and latitude and longitude of the site of the construction to be proposed; and

3. Whether the proposed construction will be within the boundaries of a city;

(d) The address of the planning and zoning commission, if any, with jurisdiction over the site of the construction to be proposed;

(e) If applicable, a description of the setback requirements of the planning and zoning commission with jurisdiction over the site of the construction to be proposed; and

(f) If the planning commission's setback requirements are less stringent than those prescribed by statute, or if the planning commission with jurisdiction, if any, has not established setbacks, a statement as to whether a deviation from the statutory setback requirements will be requested in the application.

Section 3. Board Applications and Subsequent Filings. (1) An

applicant shall file an original and ten (10) paper copies, and one (1) copy in electronic format, of its application at the offices of the Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky [~~40601~~] 40602.

(2) A paper copy of an application shall:

(a) Be in a bound volume with each document tabbed; and

(b) Contain a table of contents that lists, for each document enclosed,

1. The number of the tab behind which the document is located;

2. The statutory provision pursuant to which the document is submitted; and

3. The name of the person who will be responsible for responding to questions concerning information contained in the document.

(3) Administrative staff for the board shall determine whether the application is administratively complete and shall inform the applicant of its determination by letter.

(4) The secretary may reject for filing any document that on its face does not comply with an administrative regulation of the board.

Section 4. Intervention and Parties. (1) A person who wishes to become a party to the proceeding before the board may, by written motion filed no later than thirty (30) days after the application has been submitted, request leave to intervene.

(2) A motion to intervene shall be granted if the movant has shown:

(a) That he has a special interest in the proceeding; or

(b) That his participation in the proceeding will assist the board in reaching its decision and would not unduly interrupt the proceeding.

Section 5. Confidential Material. (1) Material on file with the board shall be available for examination by the public unless the material is determined to be confidential.

(2) Procedure for determining confidentiality.

(a) A person requesting confidential treatment of material related to his application shall file a petition with the Executive Director. The petition shall:

1. In accordance with the Kentucky Open Records Act, KRS 61.870 to 61.884, set forth each basis upon which the petitioner believes the material should be classified as confidential; and

2. Attach one (1) copy of the material which identifies, by underscoring, highlighting with transparent ink, or other reasonable method, only the portion alleged to be confidential. A text page or portion thereof which does not contain confidential material shall not be included in the identification.

(b) The petition, one (1) copy of the material which is identified by underscoring or highlighting, and ten (10) copies of the material with the portion for which confidentiality is sought obscured, shall be filed with the board.

(c) The petition and a copy of the material, with only the portion for which confidentiality is sought obscured, shall be served on each party. The petition shall contain a certificate of service on each party.

(d) The burden of proof to show that the material is exempt from the disclosure requirements of the Kentucky Open Records Act shall be upon the person requesting confidential treatment.

(e) A person may respond to the petition for confidential treatment within five (5) days after it is filed with the board.

(3) Pending action on the petition, the material specifically identified shall be temporarily accorded confidential treatment.

(4) If the petition for confidential treatment of material is denied, the material shall not be placed in the public record for twenty (20) days to allow the petitioner to petition the board directly or to seek other remedy afforded by law.

(5) Procedure for requesting access to confidential material filed in any proceeding.

(a) A party to a proceeding before the board shall not cite confidentiality as a basis for failure to respond to a discovery request by the board or its staff or any other party to the proceeding. If a party responding to a discovery request seeks to have a portion or all of the response held confidential by the board, it shall follow the "Procedure for Determining Confidentiality" in subsection (2) of this section. A party's response to a discovery request shall be served upon each party, with only the portion for which confidential treatment is sought obscured.

(b) If confidential protection is granted and if each party has not entered into a protective agreement, then a party may petition the board requesting access to the material on the basis that it is essential to a meaningful participation in the proceeding. The petition shall include a description of any effort made to enter into a protective agreement. Unwillingness to enter into a protective agreement shall be fully explained. A party may respond to the petition within five (5) days after it is filed with the board. The board shall determine if the petitioner is entitled to the material, and the manner and extent of the disclosure necessary to protect confidentiality.

(6) Request for access to records pursuant to KRS 61.870-61.884. A time period prescribed in this section shall not limit the right of a person to request access to a board record pursuant to KRS 61.870-61.884. Upon a request filed pursuant to KRS 61.870-61.884, the board shall respond in accordance with the procedure prescribed in KRS 61.880.

(7) Procedure for requesting access to confidential material. A person denied access to a record requested pursuant to KRS 61.870-61.884 or to material deemed confidential by the board in accordance with the procedure set out in this section, may obtain the information only pursuant to KRS 61.870-61.884, and other applicable law.

(8) Use of confidential material during a formal proceeding. Material deemed confidential by the board may be addressed and relied upon during a formal hearing by the following procedure:

(a) The person seeking to address the confidential material shall advise the board prior to the use of the material.

(b) Except for members of the board or its staff, a person not a party to a protective agreement related to the confidential material shall be excused from the hearing room during direct testimony and cross-examination directly related to confidential material.

(9) Material granted confidentiality that later becomes publicly available or otherwise no longer warrants confidential treatment.

[~~(10)~~] (a) The petitioner who sought confidential protection shall inform the executive director in writing if any material granted confidentiality becomes publicly available.

(b) If the executive director becomes aware that material granted confidentiality is publicly available or otherwise no longer qualifies for confidential treatment, he shall by letter so advise the petitioner who sought confidential protection, giving ten (10) days to respond. If the executive director becomes aware that material has been disclosed by someone other than the person who requested confidential treatment, in violation of a protective agreement or board order, such information shall not be deemed or considered to be publicly available and shall not be placed in the public record.

(c) The material shall not be placed in the public record for twenty (20) days following any order finding that the material no longer qualifies for confidential treatment to allow the petitioner to seek any remedy afforded by law.

Section 6. Evidentiary Hearings. (1) Upon its own motion or on written motion of a party to a case before it, filed no later than thirty (30) days after an application has been filed, the board may schedule an evidentiary hearing.

(2) A party wishing to present an expert witness at an evidentiary hearing shall, no later than five (5) days prior to the hearing date, file with the board, with a copy to each party of record, the report prepared by the expert and a full description of the credentials qualifying the witness to testify as an expert on the subject matter for which he will testify.

(3) No later than five (5) days prior to an evidentiary hearing, a party to the case shall file the name of each witness he expects to present at the hearing, together with a brief statement of each matter regarding which the witness will testify.

(4) An evidentiary hearing shall be conducted before the board or before a person designated by the board to conduct a specific hearing.

(5) Testimony before the board shall be given under oath or affirmation.

(6) If an objection is made to the admission or exclusion of

evidence before the board, the objecting party shall state briefly the basis for his objection.

(7) The board shall cause to be made a record of an evidentiary hearing.

Section 7. Filing of Briefs. A party of record may file a brief no later than seven (7) days after the conclusion of the evidentiary hearing.

Section 8. Local Public Hearings and Local Public Information Meetings. (1) A local public hearing or local public information meeting may be conducted before the board or before a person designated by the board to conduct a specific hearing;

(2) A request for a local public hearing or local public information meeting shall be made in writing and shall be filed no later than thirty (30) days after a complete application is filed.

(3) The board shall, at least [~~twenty (20)~~] ten (10) days before the hearing date, give notice of the hearing or local public information meeting to:

(a) All parties to the proceeding;

(b) The judge/executive of the county in which the construction of the facility is to be located;

(c) The mayor of the city in which the facility is to be located, if applicable; and

(d) The planning commission with jurisdiction over the area in which the facility is to be located, if applicable.

(4) The board or its designated hearing officer shall accept unsworn, oral comment from any member of the public who provides his name and address on a sign-in sheet to be provided at the hearing or local public information meeting.

(5) Within seven (7) calendar days after the local public hearing or local public information meeting, administrative staff for the board shall file in the official record of the case, with a copy to each party of record, a summary of public comments made at the local hearing or local public information meeting that:

(a) Identifies each person who made oral comments; and

(b) Summarizes the comments received.

Section 9. Notice Requirements. (1) Notice of an evidentiary hearing. At least five (5) days before the hearing date, the applicant shall submit to the board proof that it has given notice of the hearing to each party and to the general public by publication in a newspaper of general circulation in the county or municipality in which the pipeline, plant or transmission line is proposed to be located.

(2) Notice of a local public hearing or local public information meeting. At least five (5) days before the hearing date or local public information meeting date, the applicant shall submit to the board proof that it has given the general public notice of the hearing or local public information meeting in a newspaper of general circulation in the county or municipality in which the pipeline, plant or transmission lines is proposed to be located.

(3) An applicant giving public notice pursuant to KRS 278.706(2) shall include in the notice the following information:

(a) A person who wishes to become a party to a proceeding before the board may, by written motion filed no later than thirty (30) days after the application has been submitted, request leave to intervene;

(b) A party may, upon written motion filed no later than thirty (30) days after an application has been filed, request the board to schedule an evidentiary hearing at the offices of the Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky; and

(c) A request for a local public hearing or local public information meeting shall be made by at least three (3) interested persons who reside in the county or municipal corporation in which the pipeline, plant or transmission line is proposed to be located. The request shall be made in writing and shall be filed within thirty (30) days following the filing of a completed application.

DAVID L. ARMSTRONG, Chairman

APPROVED BY AGENCY: June 13, 2011

FILED WITH LRC: June 14, 2011 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 25, 2011 at 10:00 a.m. at the Public Service Commission's office, Hearing Room 2, 211 Sower Boulevard, Frankfort, Kentucky 40602. Individuals interested in attending this hearing shall notify this agency in writing by July 18, 2011, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2011. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Quang Nguyen, Public Service Commission, P.O. Box 615, Frankfort, Kentucky 40602-0615, phone (502) 564-3940, fax (502) 564-3460.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Quang Nguyen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures related to applications, filings, notice requirements, hearings, and confidential material under the jurisdiction of the Kentucky State Board on Electric Generation and Transmission Siting (Siting Board).

(b) The necessity of this administrative regulation: This administrative regulation establishes the procedural rules for the Siting Board to administer KRS 278.700-278.716. 2011 Ky. Acts ch. sec. amended KRS 278.714 to vest the Siting Board with jurisdiction to site carbon dioxide transmission pipelines in Kentucky. Therefore, the amendments are necessary to add language regarding carbon dioxide pipelines to the existing regulation.

The "Relates To" section is amended to add "278.702, 278.704, 278.706, 278.708, 278.710, 278.712, 278.714, and 278.716," which were not previously included in the regulation for unknown reasons, as these statutes are also related to the substance of the regulation and are mentioned in the body of the regulation. The "Relates To" section is further amended to include "Ky. Acts ch. 82, sec. 6" as the authority to establish a filing fee for carbon dioxide transmission pipeline applications is contained in Senate Bill 50, which was passed during the 2011 Regular Session and signed into law on March 16, 2011. That law has not yet been codified in the Kentucky Registered Statutes. Therefore, in compliance with KRS 13A.222(4)(m)2, the reference to 2011 Ky. Acts ch. 82, sec. 6 is included herein. In compliance with KRS 13A.222(4)(m)3, the Siting Board will notify the regulations compiler of the proper citation of the Kentucky Revised Statutes in writing once the law is codified in the Kentucky Registered Statutes, at which time the regulations compiler should eliminate the reference to 2011 Ky. Acts ch. 82, sec. 6, as that law amended existing statutes which are already referenced in the "Relates To" section.

The "Statutory Authority" section is amended to eliminate "KRS 278.040(3)," which provides authority to the *Public Service Commission* to adopt regulations in conformity with KRS Chapter 13A. 807 KAR 5:100 is a regulation under the jurisdiction of the Siting Board, not the Public Service Commission. KRS 278.702(3) provides authority to the Siting Board to adopt reasonable regulations in accordance with KRS 278.700 to 278.716. Therefore, "KRS 278.702(3)" is added to the "Statutory Authority" section in order to properly reflect the appropriate statutory authority.

This amendment also provides the proper zip code for the address of the board in Sections 1, 2 and 3. Since the initial promulgation of this regulation in 2002, the zip code for the Board's mailing address has changed from "40601" to "40602" and "40602-0615" for its post office box address. In addition, Section 5(9), regarding confidential materials, is amended to add language regarding the procedures to be followed if material granted confidentiality later becomes publically available or no longer warrants confidential protection.

Section 8 is amended to include language regarding a "local public information meeting." Senate Bill 50 amended KRS

278.714(5) to provide that the Siting Board shall conduct a local public information meeting upon receipt of request from three (3) persons living in the county or counties where a carbon dioxide pipeline will be constructed. The amended statute provides that the local public information meeting will "provide an opportunity for members of the public to be briefed and ask the party proposing the carbon dioxide pipeline questions about the pipeline."

Finally, Section 8(3), regarding local public hearings and local public information meetings, is amended to shorten the time period for the Board to provide notice to the parties and local government officials from twenty (20) days to ten (10) days. This amendment will provide the Board with more flexibility to schedule a local public hearing or information meeting at a date and time that is most convenient to the public and to the parties involved. Note that this amendment does not change the time period for the applicant to provide notice to the public of the local public hearing, pursuant to Section 9(2).

The Board's statutory deadline of either 90 days or 120 days (if a local public hearing is held), provide a very tight timeframe within which to conduct its review of an application. KRS 278.712 requires that any local public hearing must be conducted within 60 days of the filing of an application. 807 KAR 5:110, Section 8(2) provides that any request for a local public hearing must be filed within 30 days of the filing of the application. As currently written, 807 KAR 5:110, Section 8(3) requires the Board to provide 20 days notice of a local public hearing to the parties, the local judge/executive, and the mayor of the city in which the facility is to be constructed. Working in concert, these statutory and regulatory provisions provide a very short, 10-day window within which the Board must hold a local public hearing, if requested. Shortening the notice provision to 10 days will enlarge that time period to a 20-day window, which will allow much more flexibility to schedule a local public hearing at an appropriate time and place.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the procedural rules necessary to implement the authorizing statutes, KRS 278.700 to 278.716, as required by KRS 278.702(3).

(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 implementation of the statutes by ensuring that the Siting Board has procedures in place to process applications submitted to it.

(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 regulation

(b) The necessity of the amendment to this administrative regulation: 2011 Ky. Acts ch. 82, sec. 6 amended KRS 278.714 to place carbon dioxide transmission pipelines under the Siting Board's jurisdiction. As currently written, 807 KAR 5:110 does not mention carbon dioxide transmission pipelines. Therefore, it is necessary to add such language to the regulation to reflect the change to the statute.

It is also necessary to amend the regulation to provide the proper zip code for the Board in order to ensure that application materials are mailed to the proper location. Likewise, it is necessary to amend Section 5(9), regarding confidential materials, to include language that was unintentionally omitted when the regulation was initially promulgated in 2002. The amended language provides the procedures to follow in the event that material granted confidentiality later becomes publically available or no longer warrants confidential protection.

It is necessary to add language regarding a "local public information meeting," to Section 8, as Senate Bill 50 amended the language of KRS 278.714(5) to require the Board to hold such a meeting if requested by three (3) interested persons. Currently, Section 8 refers only to a "local public hearing."

Finally, it is necessary to amend Section 8(3) to shorten the notice provision for local public hearings from 10 days to 20 days in order to provide more flexibility to the Board to schedule such hearings at an appropriate time and place. KRS 278.712 mandates that any local public hearing must be conducted within 60 days of the filing of an application and Section 8(2) provides 30 days for persons to file a request for a local public hearing. Those requirements, combined with the current 20-day notice provision in Section 8(3), give the Board only a very small 10-day period within which a local public hearing may be scheduled. Changing the 20-day notice period to a 10-day notice period will provide a larger window of time within which a local public hearing can be scheduled. This will allow the Board to schedule the local public hearing at a time when proper facilities are available and at a time most convenient to the public and the parties involved. Furthermore, it will allow the Board flexibility to reschedule the local hearing if an emergency situation arises that might require such rescheduling.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 278.702(3) provides authority to the Siting Board to adopt reasonable regulations in accordance with KRS 278.700 to 278.716. The addition of language concerning carbon dioxide transmission pipelines is required by the amendments to KRS 278.714 contained in 2011 Ky. Acts ch. 82, sec. 6.

The additional amendments to the regulation are necessary in order to provide the correct the zip code for the Board's address, to provide procedures regarding confidential materials that were inadvertently omitted when the regulation was initially promulgated in 2002, and to provide language regarding a "local public information meeting." The amendment to Section 8(3) regarding the notice provision for local public hearings is a reasonable change, the necessity of which has been made evident by the Board's practical experience in administering the application review cases brought before it over the last nine years.

(d) How the amendment will assist in the effective administration of the statutes: The addition of language regarding carbon dioxide transmission pipelines will eliminate any question or confusion regarding whether an applicant for such construction certificate must follow the provisions of 807 KAR 5:100. The corrections to the Board's zip code will ensure that application materials are mailed to the appropriate address. Adding the missing procedures regarding confidential materials will eliminate any questions or confusion regarding the appropriate measures to be taken with confidential materials that are later released to the public or no longer warrant the protections of confidentiality. Adding language concerning a "local public information meeting" will ensure that there are procedures in place for both local public hearings and local public information meetings. Finally, amending the notice requirement regarding local public hearings will allow the Board greater flexibility to schedule such hearings when most convenient to the public and parties involved.

(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, businesses, organizations, and other entities that seek to construct carbon dioxide transmission pipelines, merchant electric generation facilities, or nonregulated electric transmission lines.

(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 proposed administrative regulation will impact any party that files an application for a construction certificate for a carbon dioxide transmission pipeline, merchant electric generation facility, or nonregulated electric transmission line. The amended regulation applies the current requirements for applicants for generating facility or electric transmission line construction certificates to applicants for a construction certificate for a carbon dioxide transmission pipeline, pursuant to 2011 Ky. Acts ch. 82, sec. 6. The amendments correcting the zip code provided in the current regulation will require applicants to use the proper zip code on all filings with the Board. The remainder of the amendments concern procedures governing the manner in which the Siting Board administers the cases before it. Therefore, applicants will not have to take any actions concerning those matters.

(b) In complying with this administrative regulation or amendment, how much will

it cost each of the entities identified in question (3): De minimis, if anything.

(c) As a result of compliance, what benefits will accrue to the

entities identified in question (3): An applicant for a construction certificate for a carbon dioxide transmission pipeline will be ensured that his application to the Board will be handled in the same manner as applicants for construction certificates for merchant generating plants and nonregulated electric transmission lines.

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

(a) Initially: Implementation of the administrative regulation does not involve costs in addition to those already implicated by statutory requirements.

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

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

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

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

(9) TIERING: Is tiering applied? (Explain why tiering was or was not used.) Tiering is not used in this proposed amendment. This amendment applies equally to all applicants for a certificate from the Siting Board, because there is no rational need to provide for alternative procedures based on applicable tiering principles.

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 proposed administrative regulation will impact any party that files an application for a construction certificate for a carbon dioxide transmission pipeline, a merchant electric generating facility, or a nonregulated electric transmission line.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 278.702(3), 278.712, and 278.714(6) (as amended by 2011 Ky. Acts ch. 82, sec. 6.

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

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

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

(c) How much will it cost to administer this program for the first year? Nothing.

(d) How much will it cost to administer this program for subsequent years? Nothing.

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

Revenues (+/-): -0-

Expenditures (+/-): -0-

Other Explanation:

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amendment)

810 KAR 1:005. Racing officials.

RELATES TO: KRS 230.240[~~KRS 230.210-230.360~~]

STATUTORY AUTHORITY: KRS 230.215, KRS 230.240, KRS 230.260[~~KRS Chapter 13A~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the commission to promulgate administrative regulations prescribing conditions under which all horse racing is conducted in the Commonwealth. KRS 230.240(1) authorizes the commission to promulgate administrative regulations prescribing the duties and powers of racing officials. This administrative regulation outlines the qualifications, duties, powers and responsibilities of racing officials.[~~To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this administrative regulation is to outline the qualifications, duties, powers and responsibilities of the racing officials.~~]

Section 1. Racing Officials. (1) Persons appointed by the association to serve as racing officials during a race meeting shall first be approved by the commission[~~authority~~], shall serve only so long as approved by the commission[~~authority~~], and shall be under the supervision of the stewards. For purposes of these administrative regulations, racing officials shall include those persons serving as steward, racing secretary, assistant racing secretary, clerk of [~~the~~] scales, paddock judge, starter, patrol judge, placing judge, timer, identifier and veterinarian.

(2) No person while serving as a racing official shall, indirectly or directly, own a beneficial interest in a thoroughbred, jockey contract, or association under his supervision; nor shall he cause to be bought or sold, for himself or another, any thoroughbred under his supervision; nor shall he buy or sell, for himself or another, any right to or in a contract with a jockey or apprentice jockey under his supervision; nor shall he wager on any race under his supervision; nor shall he write or solicit horse insurance or have any monetary interest in any business which seeks the patronage of horsemen or racing associations. For the purposes of this subsection, the following racing department employees shall also be deemed racing officials: assistant starter, jockey room custodian, jockey room employees, valets, outriders.

(3) Any racing official[~~Racing officials~~] serving in the capacity of steward[~~stewards~~], placing or[~~and~~] patrol judge[~~judges~~], clerk of scales, starter or[~~and~~] horse identifier shall take and satisfactorily pass an optical examination within one (1) year prior to the race meeting at which he serves[~~they serve~~]. The examination shall show corrected twenty-twenty (20-20) vision and an ability to distinguish colors correctly.

(4) Any racing official who desires to leave his employment during the race meeting shall first obtain permission from the commission[~~authority~~]; if a vacancy occurs among racing officials other than stewards, the association shall promptly appoint a successor, subject to approval of the commission[~~authority~~]. If the association does not appoint a successor in time to permit the orderly conduct of racing, then the stewards shall immediately appoint a temporary successor.

Section 2. Racing Secretary. The racing secretary shall be responsible for the programming of races during the race meeting, compiling and publishing condition books, assigning weights for handicap races, and shall receive all entries, subscriptions, declarations, and scratches. The racing secretary and his staff shall be responsible for:

(1) Safekeeping of registration certificates and racing permits for horses, recording information required thereon, and returning same to owners at the conclusion of the race meeting;

(2) Maintaining a record of all stakes fees received, and all arrears, jockeys' fees, purchase money in claiming races, and all other monies received incident to the race [~~racing~~] meeting and payment to those persons entitled thereto within fourteen (14) days after the conclusion of the race meeting[~~concluded~~];

(3) Supervision of the horsemen's bookkeeper's[~~bookkeeper~~] handling of the "horseman's account;"

(4) Daily posting of entries for the benefit of the public as soon as possible after[~~the~~] entries have been closed and declarations have been made;

(5) Assigning stall applicants such stabling as he may deem proper after consultation with the stewards, and to maintain a record of arrival and departure of all horses stabled on association grounds;

(6) Publishing the official daily program, insuring the accuracy

therein of the following information:

(a) Sequence of races to be run and post time for the first race;

(b) Purse, conditions, and distance for each race, and current track record for the distance;

(c) The full name of licensed owners of each horse, indicated as leased if applicable, and description of racing colors to be carried;

(d) The full name of the trainer and the full name of the jockey named for each horse together with the weight to be carried;

(e) A notice shall be included in the daily program that all jockeys will carry approximately three (3) pounds more than the published weight to account for safety helmets and safety vests that is not included in required weighing out procedures. A notice shall also be published that, upon approval of the stewards, a jockey may be allowed up to three (3) pounds additional clothing and equipment for inclement weather or track conditions.

(f)[~~(e)~~] The saddle cloth number or designation for each horse, and the post position for each horse, if there is a variance with the saddle cloth designation;

(g)[~~(f)~~] Identification of each horse by name, color, sex, age, sire and dam;

(h)[~~(g)~~] Such other information as may be requested from time to time by the association or the commission[~~authority~~].

Section 3. Clerk of [~~the~~]Scales. One (1) racing official shall serve as clerk of[~~ the~~] scales who shall be responsible for the security, regulation, and control of the jockeys'[~~jockeys~~] room, the equipment therein, and personnel permitted access thereto. The clerk of scales shall be responsible for:

(1) Weighing out every jockey no later than fifteen (15) minutes prior to the race the in which jockey is scheduled to ride and recording all overweights,[~~overweights~~] which shall immediately be posted and announced to the public before each race;

(2) Weighing in every jockey immediately after the finish of each race in which a jockey rode and promptly notifying the stewards whether any jockey weighed in [~~more than two (2) pounds~~]underweight;

(3) Safekeeping of all racing colors;

(4) Reporting all color changes or jockey changes from that listed in the official daily program and causing same to be posted and announced to the public before each race;

(5) Supervision of all valets and the issuance of numbered saddle cloths and equipment for each horse;

(6) Accuracy of the scales and periodic tests thereof;

(7) Submitting to the racing secretary at the close of each racing day a statement of weight carried in each race by each jockey, noting overweight, if any;

(8) All complaints, protests, objections, or disputes submitted to the clerk of[~~ the~~] scales shall be immediately transmitted to the stewards, and if the stewards are unavailable, to the commission[~~authority~~].

Section 4. Paddock Judge. One (1) racing official shall serve as paddock judge who shall have general supervision of the paddock. The paddock judge shall be responsible for:

(1) Assembling the horses and jockeys in the paddock no later than fifteen (15) minutes before the scheduled post time for each race;

(2) Maintaining a written record of all equipment for each horse saddled, inspecting all said equipment, and [~~inspecting all equipment of each horse saddled and~~]reporting any changes[~~change~~] thereof to the stewards;

(3) Inspecting the[~~Inspection of~~] bandages of each[~~a~~] horse. The paddock judge may order such bandages removed or replaced;

(4) Paddock schooling of all horses approved for schooling by the stewards;

(5) Taking such measures as to insure that the saddling of all horses is orderly, open to public view and free[~~, free~~] from interference, and ensuring that horses are mounted at the same time and[~~, and~~] leave the paddock for the post in proper sequence.

Section 5. Starter. (1) The starter shall be responsible for the fair and equal start of all horses in a race at the scheduled starting time by means of a starting gate and bell, or other device activated by his signal. So far as practical, the starter shall cause all horses to be loaded in order of post position, but the starter may in his discretion load an unruly or fractious horse out of order or may start the unruly or fractious horse on the outside of the starting gate and one (1) length behind the starting line. By permission of the stewards a race may be started without a starting gate. The starter may employ such assistant starters as he may deem necessary and shall daily change the gate position of each assistant starter without notice to the assistant starters until the field for the first race shall come upon the track.

(2) No horse shall be permitted to start in a race unless approval is given by the starter. The starter shall maintain a schooling list which shall be posted in the racing secretary's office listing the names of all horses ineligible to start due to inadequate training at leaving the gate. Horses shall be schooled under the supervision of the starter or his assistants.

(3) The starter shall report to the stewards any disobedience of his orders or attempts to take unfair advantage at the starting gate and recommend penalties for offenders.

(4) No assistant starter shall handle a horse until instructed to do so by the starter. No assistant starter shall strike or use abusive language to a jockey.

(5) No starter or assistant starter shall accept any gratuity or payment other than his regular salary, directly or indirectly, for services in starting a race, nor shall he wager on a race.

(6) The starter shall maintain a written record showing the names of all starters during the day and the names of the assistant starters who handled each horse, this record shall be made available to the stewards upon request.

(7) The starter shall have constant radio or telephone communication with the stewards from the time the horses leave the paddock until the field is sent away.

Section 6. Patrol Judges. At least two (2) racing officials shall serve as patrol judges who shall be stationed in elevated stands at points designated by the stewards to observe the running of each race. Each patrol judge shall have instant radio or telephone communication with the stewards to report observations, particularly as to any suspected foul riding, during the running of each race. Patrol judges shall assist in making up the film list and shall review all patrol films or video tapes before commencement of the next succeeding race program.

Section 7. Placing Judges. Three (3) racing officials shall serve as placing judges who shall occupy a stand directly above the finish line during the running of each race. The placing judges shall take special note of racing colors and distinguishing equipment carried by each horse. The placing judges shall determine the order of the horses as they cross the finish line by consideration of the respective noses of the horses. The placing judges shall cause the numbers of the first four (4) horses to cross the finish line to be flashed on the result board. A photo finish camera approved by the commission[~~authority~~] shall be used as an aid by the placing judges in determining the order of the horses as they cross the finish line; placing judges may request a photo to assist in determining margins of less than a half-length.

Section 8. Timer. A racing official shall serve as timer who shall occupy a stand directly above the finish line during the running of each race to record the official time. The timer shall record the fractional time of leading horses during each race and the final time of the first horse to cross the finish line. An electrical or mechanical timing device approved by the commission[~~authority~~] may be used as an aid by the timer in determining the official time of each race. The timer shall maintain a written record of fractional and finish times of each race and have same available for inspection by the stewards or commission on request.

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

APPROVED BY AGENCY: June 13, 2011

FILED WITH LRC: June 15, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on July 27, 2011 at 10:00 a.m., at the Kentucky Horse Racing Commission, Kentucky Horse Park, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by July 20, 2011, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 1, 2011. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Susan B. Speckert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the qualifications, duties, powers and responsibilities of racing officials at horse race meetings in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: The regulation is necessary to provide the qualifications, duties, powers and responsibilities of racing officials to ensure the highest integrity and orderly conduct of horse racing in the Commonwealth of Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation describes the qualifications, duties, powers and responsibilities of racing officials as authorized by KRS 230.240. The General Assembly vested authority and jurisdiction in the commission to regulate the conditions of horse racing and ensure the health, safety, welfare and integrity of horse racing pursuant to KRS 230.215 and 230.260.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation describes the qualifications, duties, powers and responsibilities of racing officials as authorized by KRS 230.240.

(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 outlines a duty of the racing secretary to include a notice in the daily program that all jockeys may carry additional weight due to safety equipment and inclement weather gear. The amendments also correct typographical errors and change reference from the "authority" to the "commission."

(b) The necessity of the amendment to this administrative regulation: The amendment makes this regulation consistent with 810 KAR 1:014 (Weights) as it relates to jockey weights and provides that jockeys may carry additional weight for safety and inclement weather purposes.

(c) How the amendment conforms to the content of the authorizing statutes: This regulation describes the qualifications, duties, powers and responsibilities of racing officials as authorized by KRS 230.240. The General Assembly vested authority and jurisdiction in the commission to regulate the conditions of horse racing and ensure the health, safety, welfare and integrity of horse racing pursuant to KRS 230.215 and 230.260.

(d) How the amendment will assist in the effective administration of the statutes: This regulation describes the qualifications, duties, powers and responsibilities of racing officials as authorized by KRS 230.240.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Racing associations that offer thoroughbred horse racing and thoroughbred jockeys are affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The racing secretary at each thoroughbred race track will be required to include notice that a jockey may carry extra weight due to safety equipment and inclement weather gear in the daily racing program. Thoroughbred jockeys will not be required to take any additional actions due to the amendments.

(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): Racing fans will be on notice of any potential overweights and jockeys will not be penalized for carrying extra weight due to safety equipment or inclement weather gear.

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

(a) Initially: None.

(b) On a continuing basis: None.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: None.

(9) TIERING: Is tiering applied? None.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? 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 and 230.240.

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

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

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

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amendment)

810 KAR 1:009. Jockeys and apprentices.

RELATES TO: KRS 230.215
STATUTORY AUTHORITY: KRS 230.215(2), 230.260
NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the commission to promulgate administrative regulations prescribing conditions under which all horse racing is conducted. KRS 230.260 authorizes the commission to promulgate administrative regulations that regulate conditions under which thoroughbred racing shall be conducted in Kentucky and to establish safety standards for jockeys. This administrative regulation establishes the requirements for jockeys and apprentice jockeys.

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

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

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

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

(4) The stewards determine that the person:

(a) Intends to become a licensed jockey;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) These contracts shall be:

1. Approved by the stewards;

2. Filed with the commission; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Accept any present, money, or reward of any kind in con-

nection with his riding of any race except through his contract employer.

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

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

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

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

Section 8. Jockey Fee. (1) The fee to a jockey, in the absence of special agreement to the contrary, shall be as follows: [~~(a) Purse $599 and under: winning mount, $33; second place mount, $33; third place mount, $33; losing mount, $33.~~

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

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

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

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

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

(a)[~~(g)~~] Purse up [~~$5,000~~]to $9,999: winning mount, ten (10) percent of win purse; second place mount, $70 or five (5) percent of place purse, whichever is greater [~~$65~~]; third place mount, $60[~~$50~~]; fourth place mount, $55; losing mount, $50;[~~$45.~~]

(b)[~~(h)~~] Purse, $10,000 to $14,999: winning mount, ten (10) percent of win purse; second place mount, five (5) percent of [~~second~~]place purse; third place mount, $65 or five (5) percent of show [~~third place~~]purse, whichever is greater; fourth place mount $60; losing mount, $55;[~~$50.~~]

(c)[~~(i)~~] Purse, $15,000 to $24,999: winning mount, ten (10) percent of win purse; second place mount, five (5) percent of [~~second~~]place purse; third place mount, five (5) percent of show [~~third place~~]purse; fourth place mount, $65; losing mount, $60;[~~$55.~~]

(d)[~~(j)~~] Purse, $25,000 to $49,999: winning mount, ten (10) percent of win purse; second place mount, five (5) percent of [~~second~~]place purse; third place mount, five (5) percent of show [~~third place~~]purse; fourth place mount, $75; losing mount, $70;[~~$65.~~]

(e)[~~(k)~~] Purse, $50,000 to $99,999: winning mount, ten (10) percent of win purse; second place mount, five (5) percent of [~~second~~]place purse; third place mount, five (5) percent of show [~~third place~~]purse; fourth place mount, $90; losing mount, $85; and[~~$80.~~]

(f)[~~(l)~~] Purse, $100,000 and up: winning mount, ten (10) percent of win purse; second place mount, five (5) percent of [~~second~~]place purse; third place mount, five (5) percent of show [~~third place~~]purse; fourth place mount, five (5) percent of fourth place purse; losing mount, $110[~~$105~~].

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Riding crops[~~Whip~~], blinkers, number cloths[~~cloth~~], bridles, bits, reins, over-girth, breast collar,[~~bridle,~~] goggles, [~~rider's~~] safety helmets[~~helmet~~], and [~~rider's~~] safety vests[~~vest~~] shall not be included in a rider's weight.

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

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

(2) Each jockey shall wear:

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

(b) Stock tie;

(c) White or light breeches;

(d) Top boots;

(e) A safety vest and safety helmet that meet the standards set forth in subsections (4) and (5) of this section; and

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

(3) The clerk of scales and attending valet shall be held jointly responsible with a rider for his neat and clean appearance and proper attire.

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

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

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

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

(5) A jockey mounted on a horse or stable pony at any location under the jurisdiction of the commission shall wear a safety vest at all times. If requested by a commission official, the jockey shall provide sufficient evidence that his safety vest has a tag, stamp, or similar identifying marker indicating that it meets or exceeds one (1) of the following safety standards:

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

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

(c) ASTM International Standard, ASTM F2681-08;

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

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

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

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

2. The material advertises or promotes the Permanently Disabled Jockey's Fund in the form of the pictures of its logo, with no additional picture or logo; or

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

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

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

(d) Written approval by the following is submitted to the commission:

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

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

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

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

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

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

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

(b) Comply with the following size restrictions:

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

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

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

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

(4)(a) The party presenting the advertising or promotional opportunity to the owner and jockey (including without limitation, the owner and jockey) shall disclose in writing all material terms, including financial, regarding the advertising or promotional opportunity to the owner and the jockey;

(b) The division of proceeds from any advertising or promotional material placed in accordance with this administrative regulation shall be [~~is~~]subject to agreement between the owner and the jockey;

(c) The agreement between the owner and jockey shall be made in writing on the "Owner/Jockey Advertising and Promotional Materials Agreement" not later than 5 p.m. two (2) days prior to the day of the race in which the advertising and promotional materials will be worn;

(d) Other forms of agreement or contract shall not be used; and

(e) Any party who fails to comply with this or any other provision provided in this administrative regulation may be subject to penalties by the commission in accordance with KRS Chapter 230 and 810 KAR Chapter 1.

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

(6) The sponsor of a licensed racing association race or race meeting may display advertising or promotional material on an association saddlecloth if it does not interfere with the clear visibility of the number of the horse.

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

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

Section 16. Viewing Films or Tapes of Races. (1) Every rider

shall check the film list posted by the stewards in the jockey room the day after riding in a race.

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

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

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

(a) "Request to Wear Advertising and Promotional Material", KHRC 009-01, 10/10;[~~10/10.~~]

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

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

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

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

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

APPROVED BY AGENCY: June 13, 2011

FILED WITH LRC: June 15, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 27, 2011 at 10:00 a.m., at the Kentucky Horse Racing Commission Office, Kentucky Horse Park, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by July 20, 2011, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 1, 2011. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Susan Bryson Speckert, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth restrictions and requirements regarding the participation of jockeys in horse racing. The amendments increase some categories of jockey mount fees based upon an agreement reached between the Jockeys' Guild and the Kentucky Horsemen's Benevolent and Protective Association. The amendments also clarify items that are excluded from weighing out procedures for jockeys.

(b) The necessity of this administrative regulation: Kentucky is the only major thoroughbred racing state in which there has been no increase in losing mount fees since the 1980s, apart from a $5 increase in 2001. The Jockeys' Guild and the Kentucky Horsemen's Benevolent and Protective Association negotiated the increase, and the Kentucky Thoroughbred Association/Kentucky Thoroughbred Owners and Breeders approved it as well. The Weighing Out provision of the regulation was also outdated and required amending to be consistent with actual practice.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215 grants the Kentucky Horse Racing Commission the authority to promulgate regulations governing the conduct of horse racing in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation gives updates mount fees and weighing out procedures.

(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 increase some categories of jockey mount fees based upon an agreement reached between the Jockeys' Guild and the Kentucky Horsemen's Benevolent and Protective Association. The amendments primarily affect losing mount fees and provide between a $5-10 increase from what is currently in place. The amendments also clarify items that are excluded from weighing out procedures for jockeys.

(b) The necessity of the amendment to this administrative regulation: Kentucky is the only major thoroughbred racing state in which there has been no increase in losing mount fees since the 1980s, apart from a $5 increase in 2001. The Jockeys' Guild and the Kentucky Horsemen's Benevolent and Protective Association negotiated the increase, and the Kentucky Thoroughbred Association/Kentucky Thoroughbred Owners and Breeders approved it as well. The Weighing Out provision of the regulation was also outdated and required amending to be consistent with actual practice.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215 grants the Commission broad authority to promulgate regulations governing horse racing.

(d) How the amendment will assist in the effective administration of the statutes: In the absence of an agreement to the contrary, the regulation sets the jockey mount fees. This amendment reflects an agreement reached by the Jockeys' Guild and the Kentucky Horsemen's Benevolent and Protective Association. The amendments also clarify items that are excluded from weighing out procedures for jockeys.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 100 jockeys and approximately 7000 owners licensed in Kentucky each year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Owners will be required to pay the increased jockey mount fees.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs will be imposed on the commission to comply with this amendment. Owners will be required to pay the increased jockey mount fees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Jockeys will benefit from the increased mount fee and clarity in weighing out procedures.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment increases some categories of jockey mount fees.

(9) TIERING: Is tiering applied? No tiering is applied.

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? No government agencies will be impacted except the Kentucky Horse Racing Commission, which regulates horse racing.

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

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

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

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

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-)

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amendment)

810 KAR 1:012. Horses.

RELATES TO: KRS 230.215

STATUTORY AUTHORITY: KRS 230.215, 230.260

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215 and 230.260 authorize the Kentucky Horse Racing Commission to promulgate administrative regulations regulating horse racing in Kentucky. This administrative regulation establishes requirements for the participation of horses in horse race meetings, protects the safety and welfare of the horse, and creates a level playing field for participants thereby protecting the integrity of pari-mutuel wagering.

Section 1. Definition. "Electronic registration system" means a software application available online and approved by the commission that allows an association's racing secretary, or his designee, or horse identifier, or his designee, full access to horse and trainer records from all tracks in North America, including current owner information.

Section 2. Registration Required. (1) Except as provided by subsection (2) of this section, a horse shall not be entered or raced in this state unless:

(a) Duly registered in The Jockey Club breed registry; and

(b)1. The registration certificate or racing permit issued by The Jockey Club for the horse is on file with the racing secretary; or2. The information contained on the registration certificate or racing permit is available to the racing secretary through the electronic registration system.

(2) The stewards may for good cause waive this requirement if the horse is otherwise correctly identified to the stewards' satisfaction.

(3) Upon claim, sale, or any other transfer of ownership, the horse's registration certificate or racing permit shall be given to the new owner. The new owner may report the change in ownership to an association's racing secretary, or his designee, or horse identifier, or his designee, to enter ownership information in the electronic registration system.

(4) If the electronic registration system fails for any reason, the stewards may require presentation of a horse's registration certificate or racing permit prior to a horse being entered or raced in Kentucky.

(5) The stewards may at any time require presentation of a horse's registration certificate or racing permit. Failure to comply with this provision may result in imposition of penalties pursuant to 810 KAR 1:028.

Section 3. Ringers Prohibited. (1) A horse shall not be entered or raced in this state designated by a name other than the name under which the horse is currently registered with The Jockey Club. If a horse's name is changed with The Jockey Club, the horse's former name shall be shown parenthetically in the daily race program the first three (3) times the horse races after the name change.

(2) A person shall not cause or permit the correct identity of a horse to be concealed or altered. A person shall not refuse to reveal the correct identity of a horse he owns or that is in his care to a racing official or member of the regular news media.

(3) A horse shall not race in this state unless the horse has:

(a) A legible lip tattoo number applied by agents of the Thoroughbred Racing and Protective Bureau;

(b) An electronic horse identification microchip that accurately identifies the horse and is compliant with the international standards ISO 11784; or

(c) With regards to a horse from a foreign jurisdiction participating in a graded stakes race, has otherwise been correctly identified to the stewards' satisfaction.

(4) A horse shall not be entered or raced in this state if previously involved in a "ringer" case to the extent that:

(a) A person having control of the horse knowingly entered or raced the horse while designated by a name other than the name under which the horse was registered with The Jockey Club; or

(b) The person having control of the horse participated in or assisted in the entry or racing of some other horse under the name registered as belonging to the horse in question.

Section 4. Denerving. (1) A horse on which a neurectomy has been performed shall have that fact designated on its registration certificate, racing permit, or entry in the electronic registration system. It shall be the joint responsibility of the practicing veterinarian who performed the operation and the trainer of the denerved horse to ensure this fact is correctly designated.

(2) A horse whose ulnar, radial, or median nerve has been either blocked or removed (known as high nerved), or whose volar or plantar nerve has been blocked or removed, shall not be entered or raced in this state.

(3) A horse that has had a posterior digital neurectomy (known as low nerved), may be permitted to race if the denerving has been reported by the trainer to the stewards, and the horse has been approved for racing by the commission veterinarian prior to being entered for a race.

(4) If a horse races in violation of this administrative regulation and participates in the purse distribution, then a protest shall not be considered unless submitted in writing to the stewards within forty-eight (48) hours after the race.

(5) If a horse races in violation of this administrative regulation and is claimed, then a protest shall not be considered unless the successful claimant submits a protest in writing within forty-eight (48) hours requesting the claim be voided. If the claim is voided, the horse shall be returned to the owner who started the horse in the race, and the claim price shall be returned to the claimant.

(6) A list of all denerved horses shall be posted in the racing secretary's office. Only horses that have in fact had a neurectomy shall be so reported.

Section 5. Bleeders. (1) A horse that bleeds either during or

after a race or workout and is not on bleeder medication may race on bleeder medication at the discretion of the commission veterinarian.

(2)(a) A horse that bleeds while on bleeder medication shall be placed on the veterinarian's list and shall remain on the list until removed by the commission veterinarian after consultation with the practicing veterinarian.

(b) If the commission veterinarian and the practicing veterinarian disagree on the removal of the horse from the veterinarian's list, then a third veterinarian shall be appointed by the chairman of the commission or his designee.

(c) The opinion of the third veterinarian shall be delivered to the chairman of the commission or his designee who shall make a final decision on the issue.

Section 6. Health Certificate Required. (1) A horse shall not be stabled on the grounds of a licensed association or any training center under the jurisdiction of the commission unless within ten (10) days prior to arrival on the grounds, the horse has been examined by an accredited practicing veterinarian who shall certify:

(a) The horse's identity;

(b) The horse's body temperature when examined;

(c) That, to the best of the examining veterinarian's knowledge and belief, the horse is free from any infectious or contagious disease, or exposure thereto, and observable ectoparasites; and

(d) Any other matters as may be required from time to time by the Kentucky State Veterinarian.

(2) Notice of this requirement shall be included in the stall application of all licensed associations and training centers under the jurisdiction of the commission and all condition books of licensed associations.

Section 7. Workouts. A horse shall not be schooled in the paddock or taken onto a track on association grounds for training or workout, other than during normal training hours posted by the association, without special permission of the stewards.

Section 8. Age Restrictions. A maiden six (6) years of age or older that has made five (5) life time starts on the flat shall not be entered or start.

Section 9. Fillies and Mares Bred. (1) A filly or mare that has been covered by a stallion shall be so reported to the racing secretary prior to being entered in a race.

(2) A list of all fillies and mares so reported, showing the names of stallions to which they have been bred, shall be posted in the racing secretary's office.

(3) A filly or mare that has been covered by a stallion shall not be entered in a claiming race, unless a written release from the stallion owner is attached to the filly's or mare's registration certificate indicating that the stallion service fee has been paid or satisfied.

Section 10. Serviceable for Racing. A horse shall not be entered or raced that:

(1) Is not in serviceable, sound racing condition. The stewards may at any time require a horse on association grounds to be examined by a qualified person;

(2) Is posted on a veterinarian's list, stewards' list, or starter's list, or is suspended, in any racing jurisdiction;

(3) Has been administered any drug in violation of 810 KAR 1:018;

(4) Is blind or has seriously impaired vision in both eyes;

(5) Is not correctly identified to the satisfaction of the stewards; or

(6) Is owned wholly or in part by or is trained by an ineligible person.

Section 11. Equipment. (1) Riding crops and blinkers shall be used consistently on a horse.

(2) Permission to change use of any equipment used on a horse from its last previous start shall be obtained from the stewards.

(3) A horse's tongue may be tied down during a race with a clean bandage or gauze.

(4) A horse's bridle shall not weigh more than two (2) pounds.

(5) Bits shall be of a metallic alloy base of stainless steel or aluminum and may be encased in rubber, plastic, or leather.

(6) War bridles and bitless bridles shall not be used.

(7) Bar shoes may be used for racing only with permission of the stewards.

(8) Any goading device, chain, spurs, electrical or mechanical device, or appliance, except for a riding crop, that may be used to alter the speed of a horse shall not be used on a horse in a race or workout.

(9)(a) Any riding crop may be subject to inspection and approval by the stewards or the clerk of the scales to ensure conformity with the specifications of paragraphs (c) through (e) of this subsection.

(b) Only riding crops meeting the specifications of this subsection, including the mandatory shock absorbing characteristics, may be used in thoroughbred racing and training.

(c) A riding crop shall have a:

1. Maximum weight of eight (8) ounces;

2. Maximum length, including flap, of thirty (30) inches; and

3. Minimum diameter of the shaft of three-eighths (3/8) [~~one-half (1/2)~~] inch.

(d)1. The only additional feature that may be attached to the riding crop is a flap that shall have a:

a. Maximum length from the end of the shaft of one-half (1/2) inch; and

b. Maximum width of one and six-tenths (1.6) inches, with a minimum width of eight-tenths (0.8) inch;

2. The flap from the end of the shaft shall not contain any reinforcements or additions;

3. There shall not be binding within seven (7) inches of the end of the flap;

4. The contact area of the shaft shall be smooth, with no protrusion or raised surface, and covered by shock absorbing material throughout its circumference; and

5. The flap shall have a similar shock absorbing characteristics to that of the contact area.

(e) A riding crop shall not have:

1. Stingers or projections extending through the hole of a popper; and

2. Any metal parts.

(10)(a) The following shall not be used on the front shoes of thoroughbred horses while racing or training on any racing surface:

1. Horse shoes (racing plates) that have toe grabs;

2. Bends;

3. Jar calks;

4. Stickers; and

5. Any other traction device worn on the front shoes of thoroughbred horses.

(b) Wear plates with a height no greater than two (2) millimeters may be used on the front shoes of thoroughbred horses while racing or training.

(11) Indiscriminate or brutal use on a horse of a riding crop or any other equipment, as determined by the stewards, at any time on the grounds of a licensed racing association or training center under the jurisdiction of the commission shall be prohibited.

Section 12. Sex Alteration. Any alteration in the sex of a horse shall be reported by the horse's trainer to the racing secretary and The Jockey Club promptly. The alteration shall be noted on the horse's registration certificate, racing permit, or entry in the electronic system.

Section 13. A licensed racing association or training center under the jurisdiction of the commission shall report the death or euthanization of any horse on its grounds immediately to the chief commission veterinarian.

Section 14. Postmortem Examination. A horse that dies or is euthanized on the grounds of a licensed association or training center under the jurisdiction of the commission shall undergo a postmortem examination at the discretion of the commission and at a facility designated by the commission, through its designee, as

follows:

(1) If a postmortem examination is to be conducted, the commission, through its designee, shall take possession of the horse upon death and shall not return the remains of the horse after completion of the postmortem examination. All shoes and equipment on the horse's legs shall be left on the horse;

(2) If a postmortem examination is to be conducted, the commission, through its designee, shall collect blood, urine, bodily fluids, or other biologic specimens immediately, if possible before euthanization occurs. The commission may submit blood, urine, bodily fluids, or other biologic specimens collected before euthanization or during a postmortem examination for analysis. The presence of a prohibited substance in a specimen collected during the postmortem examination may constitute a violation of 810 KAR 1:018; and

(3) All licensees shall comply with postmortem examination requirements. In proceeding with a postmortem examination the commission, through its designee, shall coordinate with the owner or owner's licensed authorized agent to determine and address any insurance requirements.

Section 15. Incorporation by Reference. (1) "ISO 11784", 1996/Amd.1:2004, is incorporated by reference.

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

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

APPROVED BY AGENCY: June 13, 2011

FILED WITH LRC: June 15, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 27, 2011 at 10:00 a.m., at the Kentucky Horse Racing Commission Office, Kentucky Horse Park, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by July 20, 2011, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 1, 2011. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Susan B. Speckert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for horses to participate in horse race meetings in Kentucky, including permitted equipment.

(b) The necessity of this administrative regulation: This regulation is necessary to provide the requirements for horses to participate in horse race meetings in Kentucky, to ensure the safety and welfare of the horse and to create a level playing field for participants thereby protecting the integrity of pari-mutuel wagering.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215 authorizes the commission to prescribe conditions under which all legitimate horse racing is conducted in Kentucky. KRS 230.260 grants the commission jurisdiction and supervision over all horse race meetings in Kentucky. This administrative regulation establishes the requirements for horses to participate in horse race meetings.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the requirements for registration and identification of horses that run or train in Kentucky. It requires a horse to be serviceable and restricts the types of equipment that may be used on a thoroughbred race horse. It provides the postmortem examination 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 changes the allowable diameter of the shaft of a riding crop from one half inch to three-eighths inch.

(b) The necessity of the amendment to this administrative regulation: This amendment makes the regulation consistent with actual practice.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215 authorizes the commission to prescribe conditions under which all legitimate horse racing is conducted in Kentucky. KRS 230.260 grants the commission jurisdiction and supervision over all horse race meetings in Kentucky. The amendment establishes the requirements for horses to participate in horse race meetings.

(d) How the amendment will assist in the effective administration of the statutes: The amendment updates the size of an allowable riding crop.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Primarily, jockeys will be affected by this amendment. Racing officials will also be affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Jockeys will have to use a riding crop that conforms to the amended regulation. Racing officials will have to ensure that jockeys are in compliance with the amended regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Most jockeys currently carry riding crops that are compliant with the amendment. If they do not, they will have to purchase a compliant riding crop.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment makes the regulation consistent with actual practice.

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

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

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

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

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

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

(9) TIERING: Is tiering applied? No tiering is applied.

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.

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

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

(c) How much will it cost to administer this program for the first year? There is no anticipated cost to administer this regulation.

(d) How much will it cost to administer this program for subsequent years? There is no anticipated cost to administer 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 1:014. Weights.

RELATES TO: KRS 230.215, KRS 230.260[~~KRS 230.210-230.360~~]

STATUTORY AUTHORITY: KRS 230.215, KRS 230.260, KRS 230.290, KRS 230.310[~~KRS Chapter 13A~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the commission to promulgate administrative regulations prescribing conditions under which all horse racing is conducted in the Commonwealth.[~~To regulate conditions under which thoroughbred racing shall be conducted in Kentucky.~~] This[~~The function of this~~] administrative regulation provides[~~is to outline~~] the requirements for assigning weights to a horse in a [~~for the horse to~~] race.

Section 1. (1) Weight penalties shall be obligatory. Weight allowance shall be claimed at time of entry and shall not be waived after the posting of entries, except by consent of the stewards.

(2) A horse shall start with only the allowance of weight to which it is entitled at the time of starting, regardless of its allowance at time of entry.

(3) A horse[~~Horses~~] incurring a weight penalty[~~penalties~~] for a race shall not be entitled to any weight allowance for that race. A horse[~~Horses~~] not entitled to the first weight allowance in a race shall not be entitled to any subsequent allowance specified in the conditions.

(4) Claim of weight allowance to which a horse is not entitled shall not disqualify the horse, unless protest is made in writing and lodged with the stewards at least one (1) hour before post time.

(5) No horse shall incur a weight penalty or be barred from any race for having been placed second or lower in any race. No horse shall be given a weight allowance for failure to finish second or lower in any race.

(6) No horse shall receive allowance of weight nor be relieved of extra weight for having been beaten in one (1) or more races, however, this subsection shall not prohibit maiden allowances or allowances to a horse that has[~~have~~] not won a race within a specified period or a race of a specified value.

(7) Penalties incurred and allowances due in steeplechase or hurdle races shall not apply to races on the flat, and vice versa.

(8) In determining eligibility, allowances and penalties, the reports, records, and statistics as published in the Daily Racing Form and the monthly chart books, or corresponding official publications of any foreign country, shall be considered official, but may be corrected until forty-five (45) minutes prior to post time of the race.

(9) Horses winning races at unrecognized meetings shall not be penalized for such winnings in races run thereafter under the jurisdiction of the commission[~~authority~~]. The maiden allowance, however, shall be lost by the winning of a race at any unrecognized meeting.

(10) Except[~~Excepting~~] in handicaps, fillies two (2) years old shall be allowed three (3) pounds, and fillies and mares three (3) years old and upward shall be allowed five (5) pounds before September 1, and three (3) pounds thereafter in races where competing against horses of the opposite sex.

(11) In all races of one (1) mile or over, other than maiden races, races for nonwinners at a mile or over, stakes races or handicaps, any horse which has never won at a distance of one (1) mile or over, shall be allowed three (3) pounds weight allowance in addition to any other allowances to which it may be entitled in the race; such allowance shall be claimed at time of entry.

(12) With the exception of apprentices, no jockey shall be assigned a weight of less than 118 pounds.[~~The following is the scale of weights for age, and shall be carried when not otherwise specified in the condition of the race:~~

~~SCALE OF WEIGHTS~~										
~~Distance~~	~~Age~~	~~January/ February~~	~~March/ April~~	~~May~~	~~June~~	~~July~~	~~August~~	~~September~~	~~October~~	~~November/ December~~
~~One-half Mile~~	~~2~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~105~~	~~108~~	~~111~~	~~114~~
	~~3~~	~~117~~	~~119~~	~~121~~	~~123~~	~~125~~	~~126~~	~~127~~	~~128~~	~~129~~
	~~4~~	~~130~~	~~130~~	~~130~~	~~130~~	~~130~~	~~130~~	~~130~~	~~130~~	~~130~~
	~~5 and up~~	~~130~~	~~130~~	~~130~~	~~130~~	~~130~~	~~130~~	~~130~~	~~130~~	~~130~~
~~Six Furlongs~~	~~2~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~102~~	~~105~~	~~108~~	~~111~~
	~~3~~	~~114~~	~~117~~	~~119~~	~~121~~	~~123~~	~~125~~	~~126~~	~~127~~	~~128~~
	~~4~~	~~129~~	~~130~~	~~130~~	~~130~~	~~130~~	~~130~~	~~130~~	~~130~~	~~130~~
	~~5 and up~~	~~130~~	~~130~~	~~130~~	~~130~~	~~130~~	~~130~~	~~130~~	~~130~~	~~130~~
~~One Mile~~	~~2~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~96~~	~~99~~	~~102~~
	~~3~~	~~107~~	~~111~~	~~113~~	~~115~~	~~117~~	~~119~~	~~121~~	~~122~~	~~123~~
	~~4~~	~~127~~	~~128~~	~~127~~	~~126~~	~~126~~	~~126~~	~~126~~	~~126~~	~~126~~
	~~5 and up~~	~~128~~	~~128~~	~~127~~	~~126~~	~~126~~	~~126~~	~~126~~	~~126~~	~~126~~
~~One~~	~~2~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~

~~Mile and a Quarter~~	~~3~~	~~101~~	~~107~~	~~111~~	~~113~~	~~116~~	~~118~~	~~120~~	~~121~~	~~122~~
	~~4~~	~~125~~	~~127~~	~~127~~	~~126~~	~~126~~	~~126~~	~~126~~	~~126~~	~~126~~
	~~5 and up~~	~~127~~	~~127~~	~~127~~	~~126~~	~~126~~	~~126~~	~~126~~	~~126~~	~~126~~
~~One Mile and a Half~~	~~2~~	~~—~~	~~—~~	~~—~~	~~—~~	~~—~~	~~—~~	~~—~~	~~—~~	~~—~~
	~~3~~	~~98~~	~~104~~	~~108~~	~~111~~	~~114~~	~~117~~	~~119~~	~~121~~	~~122~~
	~~4~~	~~124~~	~~126~~	~~126~~	~~126~~	~~126~~	~~126~~	~~126~~	~~126~~	~~126~~
	~~5 and up~~	~~126~~	~~126~~	~~126~~	~~126~~	~~126~~	~~126~~	~~126~~	~~126~~	~~126~~
~~Two Miles~~	~~3~~	~~96~~	~~102~~	~~106~~	~~109~~	~~112~~	~~114~~	~~117~~	~~119~~	~~120~~
	~~4~~	~~124~~	~~126~~	~~126~~	~~126~~	~~126~~	~~125~~	~~125~~	~~124~~	~~124~~
	~~5 and up~~	~~126~~	~~126~~	~~126~~	~~126~~	~~126~~	~~125~~	~~125~~	~~124~~	~~124~~
~~In race if intermediate lengths, the weights for the shorter distance shall be carried~~]										

(13) Jockeys shall be weighed out for their respective mounts by the clerk of scales not less than fifteen (15) minutes before post time (see also 810 KAR 1:009, Section 11(1)).

(14) A jockey's weight shall include his clothing, boots, [~~goggles,~~]saddle and its attachments, or any other equipment except as specified. None of the following items shall be included in the jockey's weight: riding crop[~~whip~~], bridle, bit or reins, safety helmet, safety vest, blinkers, goggles, over-girth, breast collar, or number cloth (see also 810 KAR 1:009, Section 11(4)). Upon approval of the stewards, jockeys may be allowed up to three (3) pounds additional clothing and equipment for inclement weather or track conditions.

(15) Five (5) pounds shall be the limit of overweight any horse is permitted to carry (see also 810 KAR 1:009, Section 11(2)).

(16) Only valets furnished by the association shall assist jockeys in weighing out.

(17) After a race has been run, the jockey shall ride promptly to the finish line, dismount, and present himself to the clerk of scales to be weighed in. He shall carry over to the scales all pieces of equipment with which he weighed out. The post-race weighing of jockeys includes any sweat, dirt, and mud that have accumulated on the jockey, jockey's clothing, jockey's safety helmet, jockey's safety vest, and over-girth. This accounts for additional weight depending on specific equipment, as well as weather, track, and racing conditions.

(18) Each jockey shall weigh in at no less than[~~the same weight as~~] that at which he weighed out, and if short[~~of it by more than two (2) pounds~~], the stewards shall investigate and when warranted take disciplinary action against the individual or individuals responsible for the violation. When warranted, such action shall include disqualification of the horse from receiving what would otherwise be its share of the purse. [~~(19) No jockey shall weigh in at more than two (2) pounds over the weight at which he weighed out, except insofar as said weight may have been affected by the elements.~~]

(19)[~~(20)~~] If a jockey is prevented from riding his mount to the finish line because of an accident or illness either to himself or his mount[~~horse~~], he may walk or be carried to the scales, or he may be excused by the stewards from weighing in.

(20) A notice shall be included in the daily program that all jockeys will carry approximately three (3) pounds more than the published weight to account for safety helmets and safety vests that is not included in required weighing out procedures. A notice shall also be published that, upon approval of the stewards, a jockey may be allowed up to three (3) pounds additional clothing and equipment for inclement weather or track conditions.

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

APPROVED BY AGENCY: June 13, 2011

FILED WITH LRC: June 15, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 27, 2011 at 10:00 a.m., at the Kentucky Horse Racing Commission Office, Kentucky Horse Park, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by July 20, 2011, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 1, 2011. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Susan Bryson Speckert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the weight requirements for horses and jockeys.

(b) The necessity of this administrative regulation: Prior to the amendment, the jockey scale of weights was outdated and not consistent with actual practice. The amendments update the scale of weights and provide that no jockey other than an apprentice shall be assigned a weight of less than 118 pounds.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215 and KRS 230.260 grant the Kentucky Horse Racing Commission the authority to promulgate regulations governing the conduct of horse racing in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation updates the jockey scale of weights and weighing out procedures.

(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 update the scale of weights and provide that no jockey other than an apprentice shall be assigned a weight of less than 118 pounds. The amendments also clarify items that are excluded from weighing out procedures for jockeys.

(b) The necessity of the amendment to this administrative regulation: Prior to the amendment, the jockey scale of weights was outdated and not consistent with actual practice. The weighing out provision of the regulation was also outdated and required amending to be consistent with actual practice.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215 grants the Commission broad authority to promulgate regulations governing horse racing.

(d) How the amendment will assist in the effective administration of the statutes: The amendments update the jockey scale of weights and clarify items that are excluded from weighing out procedures for jockeys.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 100 jockeys licensed in Kentucky each year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The updated scale of weights is consistent with current practice and more realistic for jockeys to make.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Jockeys will benefit from the updated scale of weights and clarity in weighing out procedures.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: None.

(9) TIERING: Is tiering applied? No tiering is applied.

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? No government agencies will be impacted except the Kentucky Horse Racing Commission, which regulates horse racing.

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

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

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

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

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amendment)

810 KAR 1:070. Kentucky thoroughbred breeders' incentive fund.

RELATES TO: KRS 230.225(7)(b), 230.330, 230.800

STATUTORY AUTHORITY: KRS 230.800

NECESSITY, FUNCTION AND CONFORMITY: KRS. 230.800 establishes the Kentucky Thoroughbred[~~Horse~~] Breeders' Incentive Fund. KRS 230.800(2)(b) authorizes the commission[~~Authority~~] to promulgate administrative regulations establishing the conditions and criteria for the distribution of moneys from the fund. This administrative regulation establishes eligibility standards, administrative practices to enforce the standards, and the administration of payments from the fund.

Section 1. Definitions. (1) "Allowance race" means an overnight race for which eligibility and weight to be carried is determined according to specified conditions which include age, gender, earnings, and number of wins, excluding starter allowance races.

(2) "Claiming earnings" means the gross cash portion, as this portion is determined by The Jockey Club, of the prize awarded to a qualified Kentucky claiming horse that is paid from the association or the license holder permitted to conduct racing in the jurisdiction.

(3) "Claiming race" means a race in which every horse running therein may be transferred in conformity with 810 KAR 1:015.

(4) "Grade I stakes race" means a nonrestricted race held in the United States which has been assigned Grade I stakes status for the year contested by the American Graded Stakes Committee of the Thoroughbred Owners and Breeders Association for the United States.

(5) "Grade II stakes race" means a nonrestricted race held in the United States which has been assigned Grade II stakes status for the year contested by the American Graded Stakes Committee of the Thoroughbred Owners and Breeders Association for the United States.

(6) "Grade III stakes race" means a nonrestricted race held in the United States which has been assigned Grade III stakes status for the year contested by the American Graded Stakes Committee of the Thoroughbred Owners and Breeders Association for the United States.

(7) "Group I race" means:

(a) A nonrestricted race held in England, France, or Ireland which has been assigned Group I race status for the year contested by the European Pattern Committee; or

(b) A nonrestricted race held in Canada which has been assigned Canadian Grade I stakes status for the year contested by the Canadian Graded Stakes Committee.

(8) "Group II race" means:

(a) A nonrestricted race held in England, France, or Ireland which has been assigned Group II race status for the year contested by the European Pattern Committee; or

(b) A nonrestricted race held in Canada which has been assigned Canadian Grade II stakes status for the year contested by the Canadian Graded Stakes Committee.

(9) "Group III race" means:

(a) A nonrestricted race held in England, France, or Ireland which has been assigned Group III race status for the year contested by the European Pattern Committee; or

(b) A nonrestricted race held in Canada which has been assigned Canadian Grade III stakes status for the year contested by the Canadian Graded Stakes Committee.

(10) "Intended breeder of record" means the owner or lessee of a thoroughbred mare who desires to use the mare for breeding purposes and to qualify the foal for the Kentucky Thoroughbred Breeders' Incentive Fund and who is listed as the intended breeder of record on the forms necessary to register under the KBIF.

(11) "KBIF" means the Kentucky Thoroughbred Breeders' Incentive Fund.

(12) "KBIF registered horse" means a horse registered with the Kentucky Thoroughbred Breeders' Incentive Fund.

(13) "Kentucky sire" means a sire registered as a Kentucky Thoroughbred Development Fund sire.

(14) "Kentucky Thoroughbred Breeders' Incentive Fund" means the trust and revolving fund set out in KRS 230.800.

(15) "Maiden special weight race" means a race in which:

(a) None of the runners have been previously declared a winner; and

(b) None of the runners are eligible to be claimed.

(16) "Overnight race" means a race for which entries close at a time set by the racing secretary.

(17) "Qualified breeder" means the breeder of record as listed in The Jockey Club records.

(18) "Qualified Kentucky claiming horse" means a foal who is born out of a qualified mare and from a Kentucky sire, and who receives earnings from a claiming race in Kentucky.

(19) "Qualified mare" means a thoroughbred dam who resides in Kentucky from the time of the first cover in Kentucky by a Kentucky sire until foaling, unless one (1) of the exceptions in Section 5(4) of this administrative regulation is met.

(20) "Qualified winner" means a thoroughbred horse born out of a qualified mare and from a Kentucky sire and whose nose reaches the finish line first or is placed first through disqualification by the stewards and is not eligible to be claimed in that race.

(21) "Qualified winner's earnings" means the gross cash portion of the prize, as this portion is determined by The Jockey Club, awarded to the qualified winner of a race that is paid for from the association or the license holder permitted to conduct racing in the jurisdiction.

(22) "Starter allowance" means a race written to allow claiming horses who have improved from their earlier form to run in a non-claiming event.

Section 2. Timing of Awards; Eligibility. (1) Disbursements from the Kentucky Thoroughbred Breeders' Incentive Fund shall be made as soon as is practicable after the end of each full racing year based on a calendar year, but not later than March 31[~~February 15~~] of the calendar year following the last date the application may be filed under Section 7(3)(b) of this administrative regulation.

(2) For a horse foaled prior to 2007, if the horse is eligible to be registered to receive funds under the Kentucky Thoroughbred Development Fund, the breeder shall be eligible to receive funds from the Kentucky Thoroughbred Breeders' Incentive Fund, subject to registration under Section 4(1) of this administrative regulation.

(3) For a horse foaled during or after 2007, the requirements set forth in this administrative regulation shall be met.

(4) The races eligible for awards from the KBIF as provided in Sections 3 and 6 of this administration regulation shall be those run on and after January 1, 2006.

Section 3. Awards. (1)(a) An incentive shall be awarded to the qualified breeder of the qualified winner of each of the Kentucky Derby and Kentucky Oaks.

(b) The incentive shall be fifty thousand dollars ($50,000).

(2)(a) An incentive shall be awarded to the top twenty (20) horses with the most claiming wins in Kentucky each year.

(b) Horses earning awards at a Kentucky race track through any component other than the claiming component during the same calendar year will not be eligible for the Kentucky claiming component.

(c) An incentive of $200,000 will be distributed to the top twenty (20) qualified Kentucky claiming horses with the most wins, as follows:

1. $20,000 to the horse with the most wins;
2. $17,500 to the horse with the second most wins;
3. $15,000 to the horse with the third most wins;
4. $12,500 to the horse with the fourth most wins;
5. $12,000 to the horse with the fifth most wins;
6. $11,500 to the horse with the sixth most wins;
7. $11,000 to the horse with the seventh most wins;
8. $10,500 to the horse with the eighth most wins;
9. $10,000 to the horse with the ninth most wins;
10. $9,500 to the horse with the tenth most wins;
11. $9,000 to the horse with the eleventh most wins;
12. $8,500 to the horse with the twelfth most wins;
13. $8,000 to the horse with the thirteenth most wins;
14. $7,500 to the horse with the fourteenth most wins;
15. $7,000 to the horse with the fifteenth most wins;
16. $6,500 to the horse with the sixteenth most wins;
17. $6,000 to the horse with the seventeenth most wins;
18. $6,000 to the horse with the eighteenth most wins;
19. $6,000 to the horse with the nineteenth most wins;
20. $6,000 to the horse with the twentieth most wins;

(d) Claiming earnings earned at a Kentucky race track from the same calendar year will be used to settle any ties.

(e) If two horses have the same number of wins and the same total earnings, all incentive totals to which those horses would have been entitled shall be divided equally between them. This applies in dividing all incentives whatever the number of horses that finish with the same number of wins and the same total earnings.

(3)(a) For those KBIF registered horses foaled in 2007 or after, an incentive shall be awarded to the qualified breeder of the qualified winner of each maiden special weight and allowance race held in the United States, but outside Kentucky, or at Woodbine Racetrack in Ontario, Canada.

(b) The incentive shall be that amount which is equal to ten (10) percent of the qualified winner's earnings but shall not exceed three thousand dollars ($3,000).

(4)(a) An incentive shall be awarded to the qualified breeder of the qualified winner of each maiden special weight and allowance race held in Kentucky.

(b) The incentive shall be that amount which is equal to ten (10) percent of the qualified winner's earnings but shall not exceed three thousand dollars ($3,000).

(5)(a) For those KBIF registered horses foaled in 2007 or after, an incentive shall be awarded to the qualified breeder of the qualified winner of each non-graded stakes race held in the United States, but outside Kentucky, or at Woodbine Racetrack in Ontario, Canada.

(b) The incentive shall be that amount which is equal to ten (10) percent of the qualified winner's earnings but shall not exceed four thousand dollars ($4,000).

(6)(a) An incentive shall be awarded to the qualified breeder of the qualified winner of each non-graded stakes race held in Kentucky.

(b) The incentive shall be that amount which is equal to ten (10) percent of the qualified winner's earnings but shall not exceed four thousand dollars ($4,000).

(7)(a) An incentive shall be awarded to the qualified breeder of the qualified winner of each Grade I stakes race held in the United States or Group 1 race held in Canada, England, France or Ireland as well as Group 1 races held on Dubai World Cup day, Japan Cup day and Hong Kong International day.

(b) The incentive shall be seven thousand, five hundred dollars ($7,500).

(8)(a) An incentive shall be awarded to the qualified breeder of the qualified winner of each Grade II or Grade III stakes race held in the United States or Group 2 or Group 3 race held in Canada, England, France or Ireland.

(b) The incentive shall be five thousand dollars ($5,000).

(9) No incentive shall be awarded to the winner of any Breeders' Cup World Championship race.[~~Kentucky first component:~~

~~(a) An incentive shall be awarded to the qualified breeder of the qualified winner of each maiden special weight, allowance, and stakes race run in Kentucky, except for any Breeders' Cup World Thoroughbred Championship race run in Kentucky and any Grade I stakes race run in Kentucky.~~

~~(b) The incentive shall be that amount which is equal to twenty-five (25) percent of the qualified winner's earnings except for those receiving awards under subsection (3) of this section.~~

~~(c) The amount a qualified breeder may be awarded from the KBIF in each race shall be no more than $10,000 except for those receiving awards under subsection (3) of this section.~~

~~(2) National component:~~

~~(a) An incentive shall be awarded to the qualified breeder of the qualified winner of each maiden special weight and allowance race won by two (2), three (3), and four (4) year old thoroughbreds held in states within the United States other than Kentucky.~~]

~~(b) The incentive shall be that amount which is equal to ten (10) percent of the qualified winner's earnings.~~

~~(c) The amount a qualified breeder may be awarded from the KBIF in each race shall be no more than $10,000.~~

~~(3) Kentucky Grade I stakes race component. An incentive shall be awarded to the qualified breeder of the qualified winner of each Grade I stakes race run in Kentucky, except for any Breeders' Cup World Thoroughbred Championship race run in Kentucky as follows:~~

~~(a) An incentive in the total amount of $25,000 shall be awarded to the qualified breeder of each of the qualified winners of each Grade I stakes race run in Kentucky, except for the Kentucky Derby and the Kentucky Oaks; and~~

~~(b) An incentive in the total amount of $100,000 shall be awarded to the qualified breeder of the qualified winner of each of the Kentucky Derby and the Kentucky Oaks.~~

~~(4) National Grade I stakes race component. An incentive in the amount of $2,500 shall be awarded to the qualified breeder of the qualified winner of each Grade I stakes race run within the United States but outside of Kentucky except that an incentive shall not be awarded under this administrative regulation in connection with any Breeders' Cup World Thoroughbred Championship race.~~

~~(5) Kentucky claiming component. An incentive shall be awarded to the qualified breeders of Kentucky's best claiming horses as follows:~~

~~(a) An incentive of $25,000 shall be awarded to the qualified breeder of the qualified Kentucky claiming horse that has the highest earnings in claiming races run at each of Churchill Downs, Ellis Park, Keeneland, and Turfway Park, respectively, for each calendar year; and~~

~~(b) A claiming title incentive of $100,000 shall be divided among the breeders of the top three (3) qualified Kentucky claiming horses with the highest cumulative claiming earnings derived from claiming races in Kentucky for each calendar year in the following percentages:~~

~~1. Fifty (50) percent for 1st place;~~

~~2. Thirty (30) percent for 2nd place; and~~

~~3. Twenty (20) percent for 3rd place.~~]

Section 4. Registration of Foals. (1)(a) For a horse foaled prior to 2007 and eligible to be registered under Section 2(2) of this administrative regulation, the intended breeder of record shall file with the commission[~~Authority~~] a "Grandfather Application for the Kentucky Thoroughbred Breeders' Incentive Fund (for a horse born in 2006 and prior years)".

(b) The application shall be filed no later than December 31 of the year following the year in which the horse has raced in a race that would qualify him for an incentive from the KBIF.

(c) A filing fee of thirty (30) dollars may be paid with the application or it shall be deducted from the award amount.

(2)[~~(a) For the 2006 breeding season, the intended breeder of record shall file with the Authority an "Application for the Kentucky Thoroughbred Breeders' Incentive Fund (for the 2006 breeding season)".~~

~~(b) The application shall be filed either:~~

~~(i) Within forty five (45) days after the first cover of the mare proposed to be a qualified mare to a Kentucky sire, along with a filing fee of thirty (30) dollars; or~~

~~(ii) On or prior to August 1, 2006 along with a filing fee of sixty (60) dollars, except as provided in subsection (6) of this section.~~

~~(3) For the breeding season beginning in 2007 and thereafter, the~~] The intended breeder of record shall register the unborn foal with the commission[~~Authority~~] on or prior to August 15 of the breeding season by filing the "Application for the Kentucky Thoroughbred Breeders' Incentive Fund (for the breeding season beginning in 2007)" and paying a filing fee of sixty (60) dollars, except as provided in subsection (6) of this section.

(3)[~~(4)~~](a) The commission[~~Authority~~] shall be recognized and designated as the sole official registrar of the Kentucky Thoroughbred Breeders' Incentive Fund for the purposes of registering Kentucky thoroughbred foals in accordance with the terms of this administrative regulation.

(b) The records of The Jockey Club shall be used as the official records of the commission[~~Authority~~] for determining the following information:

1. The identity of the qualified breeder;

2. The claiming wins and earnings for each race pursuant to which an award shall be granted under this administrative regulation;

3. The qualified winners' earnings for each race pursuant to which an award shall be granted under this administrative regulation;

4. The name of the qualified winner for each race pursuant to which an award shall be granted under this administrative regulation;

5. The name of each horse determined to be a qualified Kentucky claiming horse for purposes of calculating the awards under Section 3(2)[~~3(5)~~] of this administrative regulation;

6. The registration number or special identification number of the KBIF-registered horse;

7. The name of the KBIF-registered horse; and

8. Other information for purposes of administering the KBIF.

(4)[~~(5)~~] If the information on a form required under this section is found to be incorrect or becomes incorrect or changes, the person considered to be the intended breeder of record shall be responsible for promptly filing an amended form with the commission[~~Authority~~] to correct the information within thirty (30) days of realizing the inaccuracy or of the circumstances causing the information to change. [~~An amended form shall not be required if the only change is a change of address for the mare, provided the mare remains in Kentucky.~~]

(5)[~~(6)~~](a) A hardship filing may be made if the intended breeder of record can prove that there was good cause for the application to not have been filed on a timely basis as required under subsections (2) and (3) of this section, and that the foal otherwise met the eligibility requirements to be a KBIF-registered horse. The filing shall be made on the form "Late Filing of Application for the Kentucky Breeders' Incentive Fund".

(b) The amount of the filing fee shall be as follows:

1.[~~(i)~~] For a filing made after August 15[~~1~~] of the breeding season and on or prior to December 31 of the cover year[~~ foaled~~], the filing fee shall be $150[~~$750~~];[~~ and~~]

2. For a filing made after December 31 of the cover year and on or prior to December 31 of the weanling year, the filing fee shall be $750; and

3.[~~(ii)~~] For a filing made between January 1 and December 31 of the yearling year, the filing fee shall be $1,500. No other late filing shall be permitted. [~~(7) A breeder may appoint an authorized agent by completing and filing with the Authority a "Kentucky Thoroughbred Breeders' Incentive Fund Authorized Agent Form".~~]

(6)[~~(8)~~] If ownership of a mare is transferred, a "Mare Transfer of Ownership Report in connection with the Kentucky Thoroughbred Breeders' Incentive Fund" shall be filed with the commission[~~Authority~~].

(7) If any registration or nomination deadline imposed by this administrative regulation falls on a weekend or holiday, the deadline shall be moved to the next business day following the original deadline.

Section 5. Qualification of Foal And Qualified Mare. (1) The commission[~~Authority~~] shall have the right to inspect the location where the mare proposed to be a qualified mare is boarded to determine that the residency requirement is met. The commission[~~Authority~~] shall also have the right to request, obtain, and inspect records relating to the location of the mare proposed to be a qualified mare to determine that the residency requirement is met.

(2) The person claiming to be the qualified breeder shall bear the burden of proof to show that a mare is a qualified mare.

(3) A failure to comply with a term, condition, or requirement of this administrative regulation shall not result in the loss of the registration of the foal, if the person claiming the foal should be registered proves to the commission[~~Authority~~]:

(a) The failure to comply was insignificant with respect to the registration requirements as a whole; and

(b) A good faith and reasonable attempt was made to comply with all applicable terms, conditions, and requirements of this ad-

ministrative regulation.

(4) In order for the mare to be a qualified mare as defined in Section 1(19) of this administrative regulation, the thoroughbred dam shall have resided in Kentucky from the time of the first cover in Kentucky by a Kentucky sire until foaling unless one (1) of the following exceptions is met:

(a) Medical procedure.

1. A medical procedure is required to be performed to protect the health of the mare or the unborn foal that involves an extraordinary medical situation and the breeder desires to have an expert located outside of Kentucky conduct the procedure;

2. The owner or the lessee of the mare, at the time the mare leaves Kentucky, files an "Application to Move a Mare outside of Kentucky in connection with the Kentucky Thoroughbred Breeders' Incentive Fund" and provides information relating to the procedure as requested by the commission[~~Authority~~] within fourteen (14) days after the mare leaves Kentucky;

3. The executive director of the commission[~~Authority~~] approves the departure of the mare from Kentucky; and

4. The mare remains under the care of a veterinarian during the entire period of time she is not residing in Kentucky other than the time during which she is traveling to and from Kentucky; or

(b) Training.

1. The mare has not yet delivered her first foal and is in active training outside of Kentucky;

2. The owner or the lessee of the mare, at the time the mare leaves Kentucky, files an "Application to Move a Mare Outside of Kentucky in connection with the Kentucky Thoroughbred Breeders' Incentive Fund" and provides information relating to the training outside of Kentucky as requested by the commission[~~Authority~~] within fourteen (14) days after the mare leaves Kentucky;

3. The executive director of the commission[~~Authority~~] approves the departure of the mare from Kentucky; and

4. The mare returns to Kentucky within ten (10) days after the end of her racing career.

(5) The executive director shall notify the commission[~~Authority~~] if an exception is made to the residency requirement pursuant to subsection (4) of this section.

(6) A qualified breeder of a qualified mare shall be responsible for:

(a) The registration and records of the KBIF -registered horse; and

(b) Complying with the requirements of the Kentucky Thoroughbred Breeders' Incentive Fund.

(7) The owner or lessee of the desire to withdraw the mare's foal from the KBIF by filing a "Notice of Withdrawal of Foal from the Kentucky Thoroughbred Breeders' Incentive Fund."

Section 6. Bonus Calculation. (1) Funds available in the KBIF state account resulting from the breeding season relating to each year preceding the granting of the actual awards shall be apportioned according to Sections 3 and 6 of this administrative regulation.

(2) The funds apportioned to each qualified breeder shall be awarded by determining the amount a qualified breeder is eligible to receive based on Sections 3 and 6 of this administrative regulation.

(3) If, at the close of any calendar year, inadequate funding is available to the KBIF to fund the awards provided for in Section 3 of this administrative regulation, the funding shall be decreased proportionally among all awards, excluding the Kentucky claiming award, the Kentucky Oaks award, and the Kentucky Derby award until funding is adequate to fund all awards.[~~in the following order:~~

~~(a) The incentive awarded under the Kentucky first component and the national component shall each be decreased proportionately as provided below, as needed to make the funding adequate:~~

~~1. For the Kentucky first component, the award shall be decreased to no less than an amount which is twenty (20) percent of the qualified winners' earnings; and~~

~~2. For the national component, the award shall be decreased to no less than an amount which is eight (8) percent of the qualified winners' earnings.~~

~~(b) If the reductions made pursuant to paragraph (a) of this subsection are insufficient, the incentive awarded under the national Grade I stakes race component and the Kentucky claiming component shall be decreased by the same percentage as needed to make the funding adequate. The decrease shall not exceed fifty (50) percent for each component.~~

~~(c) If the reductions made pursuant to paragraphs (a) and (b) of this subsection are insufficient, the incentive awarded under the national component shall be decreased as needed to make the funding adequate.~~]

(4)(a) If, at the close of a calendar year, the amount available for awards is in excess of the amount necessary to fund the awards provided in Section 3 of this administrative regulation, after payment of operating expenses, a reserve fund shall be established in the KBIF in an amount which is no more than five (5) percent of the amount of funding available from tax receipts for that calendar year.

(b) Moneys in the reserve account may be used as needed to provide funding of awards in a subsequent calendar year if the amount available at the close of the last calendar year is insufficient to fund the awards provided in Section 3 of this administrative regulation.

(c) Additional money shall not be added to the reserve fund if it contains at least $5,000,000 at the time the excess funding is available.

(5) If, at the close of a calendar year, the amount available for awards is in excess of the amount necessary to fund the awards provided in Section 3 of this administrative regulation and an amount has been designated for the reserve fund provided for in subsection (4)(a) of this section, then the awards shall be increased proportionally among all awards except the Kentucky claiming award, the Kentucky Oaks award, and the Kentucky Derby award.[~~as provided in this subsection. The order in which an award shall be increased shall be:~~

~~(a) An international component shall be added for Group I races with an award of no less than $750 and no more than $2,500 per race as the fund permits.~~

~~(b) If the funding continues to be in excess of that required for the reserve and for the allocations set forth in paragraph (a) of this subsection, the incentives for Group I races and national Grade I stakes races shall be increased to an award of up to $5,000 per race as the fund permits.~~

~~(c) If the funding continues to be in excess of that required for the reserve and for the allocations set forth in paragraphs (a) and (b) of this subsection, the additional funds shall be divided with fifty (50) percent of the additional funds (the "total Kentucky bonus") being awarded to Kentucky races as set forth in subparagraph 1 of this paragraph and fifty (50) percent of the additional funds (the "total national and international bonus") being awarded to national and international races as set forth in subparagraph 2 of this paragraph.~~

~~1. Kentucky races. The awards for the Kentucky races shall be increased in the following order as the KBIF permits:~~

~~a. The incentives for Grade II stakes races and Grade III stakes races in Kentucky shall be increased equally to an award of up to $25,000 per race; and~~

~~b. If the funding continues to be in excess of that required for the reserve and for the allocations set forth in paragraphs (a) and (b) of this subsection and clause a of this subparagraph, the incentives provided for in Section 3(1), (3), and (5) of this administrative regulation and clause a of this subparagraph, then a bonus amount shall be given to each recipient of an award under Section 3(1), (3), and (5) of this administrative regulation and clause a of this subparagraph (the "Kentucky bonus components") determined as follows:~~

~~(i) The denominator to be used in calculating the factor shall be the sum of the dollar amounts awarded pursuant to Section 3(1), (3), (5) of this administrative regulation and clause a of this subparagraph.~~

~~(ii) The numerator to be used in calculating the factor shall be the dollar amount of the additional funds available under the total Kentucky bonus.~~

~~(iii) The factor shall be the result of the division of the numerator into the denominator.~~

~~(iv) The factor shall be multiplied by each individual award~~

~~granted under the Kentucky bonus components to determine the bonus amount for each award.~~

~~2. International and national races. The awards for the International and national races shall be increased in the following order as the KBIF permits:~~

~~a. The incentives for Grade II stakes race, Grade III stakes race, Group II races and Group III races shall be increased to an award of up to $5,000 per race; and~~

~~b. If the funding continues to be in excess of that required for the reserve and for the allocations set forth in paragraphs (a) and (b) of this subsection and clause a of this subparagraph, and the incentives provided in Section 3(2) and (4) of this administrative regulation, paragraph (b) of this subsection, and clause a of this subparagraph, then a bonus amount shall be given to each recipient of an award under Section 3(2) and (4) of this administrative regulation, paragraph (b) of this subsection, and clause a of this subparagraph (the "national and international bonus components") determined as follows:~~

~~(i) The denominator to be used in calculating the factor shall be the sum of the dollar amounts awarded pursuant to Section 3(2) and (4) of this administrative regulation, paragraph (b) of this subsection, and clause a of this subparagraph.~~

~~(ii) The numerator to be used in calculating the factor shall be the dollar amount of the additional funds available for the total national and international bonus.~~

~~(iii) The factor shall be the result of the division of the numerator into the denominator.~~

~~(iv) The factor shall be multiplied by each individual award granted under the national and international bonus components to determine the bonus amount for each award.~~]

Section 7. Application Requirements. (1) The amount due for awards shall be calculated after the end of each racing year. The recipient of an award shall be notified of the amount of the award to which the recipient may be entitled according to the last known address on file with the commission[~~Authority~~].

(2)(a) After receipt of notification of an award, each potential recipient shall be required to return an application for the award that certifies that the applicant is entitled to the award and certifies the applicant's taxpayer ID number or Social Security number.

(b) The application shall be on the form "Application for an Award from Kentucky Thoroughbred Breeders' Incentive Fund".

(c) A breeder may appoint an authorized agent to complete the "Application for Award from Kentucky Thoroughbred Breeders' Incentive Fund" by completing and filing with the commission a "Kentucky Thoroughbred Breeders' Incentive Fund Authorized Agent Form".

(3)(a) Awards due recipients who cannot be located by December 31 of the year after the year in which the qualified winner or qualified Kentucky claiming horse became eligible to receive an incentive under Section 3 of this administrative regulation shall lapse to the KBIF for distribution or building the reserve in the following year.

(b) Failure to return the application required by subsection (2) of this section by December 31 of the year after the year in which the qualified winner or qualified Kentucky claiming horse became eligible to receive an incentive under Section 3 of this administrative regulation, shall result in forfeiture of the award and the award money shall lapse to the KBIF for distribution or building the reserve in the following year.

Section 8. Disputes. (1) Any dispute arising under this administrative regulation shall be raised by the aggrieved party filing a petition seeking relief with the executive director, within thirty (30) days of action or inaction leading to the dispute.

(2) If the executive director and the aggrieved party do not agree on a resolution of the dispute, the executive director shall assign the case to a hearing officer who shall conduct a hearing pursuant to KRS Chapter 13B.

Section 9. Disciplinary Procedures. (1) The commission[~~Authority~~] may deny or revoke the registration of a foal or horse if the qualified breeder, or an applicant for qualified breeder status:

(a) Provides[~~Knowingly provides~~] the commission[~~Authority~~] with incorrect, false, or misleading information concerning a foal or horse and fails within thirty (30) days to provide accurate information upon request by the commission[~~Authority~~];

(b) Fails[~~Knowingly fails~~] to furnish within thirty (30) days information the commission[~~Authority~~] has requested relating to the registration of a foal or horse; or

(c) Violates[~~Knowingly violates~~] this administrative regulation in any other manner.

(2) If the commission[~~Authority~~] denies or revokes the registration of the foal or horse, the qualified breeder or applicant for qualified breeder status may request, and the commission[~~Authority~~] shall thereupon schedule, a hearing to be conducted pursuant to KRS Chapter 13B.

(3) At the conclusion of the hearing, the commission[~~Authority~~] shall in its final order determine whether the qualified breeder or applicant for qualified breeder status has [~~knowingly~~]provided the commission[~~Authority~~] with false or misleading information, or has [~~knowingly~~] failed to provide the commission[~~Authority~~] with requested information, or has [~~knowingly~~] violated this administrative regulation in any other manner, and may take one (1) or more of the following actions:

(a) Deny or revoke the registration;

(b) Uphold the denial or revocation of the registration;

(c) Rescind the denial or revocation of the registration; or

(d) Bar the applicant who failed to furnish the requested information or who has [~~knowingly~~] violated the administrative regulation from registering foals to the fund for a period of one (1) to five (5) breeding seasons, based on the seriousness of the violation, beginning with the season in which the violation occurred.

(4) If a person or his or her designee or representative fails to appear at the hearing, the commission[~~Authority~~] may take one (1) or more of the following actions:

(a) Deny or revoke the registration; or

(b) Bar the owner or lessee who failed to respond to the summons from registering foals to the fund for a period of one (1) to five (5) breeding seasons, based on the seriousness of the violation, beginning with the breeding season in which the violation occurred.

(5) A second or subsequent violation of this administrative regulation may result in a lifetime bar of the applicant or qualified breeder from being eligible to receive an incentive from the KBIF.

(6) The commission[~~Authority~~] shall notify the applicant or qualified breeder in writing of the action taken by the commission[~~Authority~~].

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Grandfather Application for the Kentucky Thoroughbred Breeders' Incentive Fund (for a horse born in 2006 and prior years)", KHRA Form 20-1, (4/06);

(b) "Application for the Kentucky Thoroughbred Breeders' Incentive Fund (for the 2006 breeding season)", KHRA Form 20-2, (4/06);

(c) "Application for the Kentucky Thoroughbred Breeders' Incentive Fund (for the breeding season beginning 2007)", KHRA Form 20-3, (4/06)

(d) "Mare Transfer of Ownership Report in connection with the Kentucky Thoroughbred Breeders' Incentive Fund", KHRA Form 20-4, (4/06);

(e) "Kentucky Thoroughbred Breeders' Incentive Fund Authorized Agent Form", KHRA Form 20-5, (4/06);

(f) "Application to Move a Mare Outside of Kentucky in connection with the Kentucky Thoroughbred Breeders' Incentive Fund", KHRA Form 20-6, (4/06);

(g) "Notice of Withdrawal of Foal from the Kentucky Thoroughbred Breeders' Incentive Fund", KHRA Form 20-7, (4/06);

(h) "Late Filing of Application for the Kentucky Thoroughbred Breeders' Incentive Fund", KHRA Form 20-8, (4/06); and

(i) "Application for Award from Kentucky Thoroughbred Breeders' Incentive Fund", KHRA Form 20-9, (4/06).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, from the Kentucky Horse Racing Commission[~~Authority~~], 4063 Iron Works Pike, Building B, Lexing-

ton, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the KHRC Web site at www.khrc.ky.gov[~~www.khra.ky.gov~~].

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

APPROVED BY AGENCY: June 13, 2011

FILED WITH LRC: June 15, 2011 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 27, 2011 at 1:00 p.m., at the offices of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by July 20, 2011, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 1, 2011. 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

(l) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes eligibility standards, administrative practices to enforce the standards, and the administration of payments from the Kentucky Thoroughbred Breeders' Incentive Fund (the "Fund").

(b) The necessity of this administrative regulation: This administrative regulation is necessary for the efficient administration of the Fund and to provide notice to participants regarding registration and eligibility standards and the rules that govern distribution of moneys from the Fund.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.800(2)(b) requires the commission to "promulgate administrative regulations establishing the conditions and criteria for the distribution of moneys from the fund." This regulation fulfills that statutory mandate.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 230.800(2)(a) states, "[T]he Kentucky Horse Racing Commission shall use moneys deposited in the Kentucky thoroughbred breeders incentive fund to administer the fund and provide rewards for breeders of horses bred and foaled in Kentucky." This regulation sets forth the eligibility criteria for participation in the Fund, as well as the rules regarding distribution of rewards. It puts participants on notice of the deadlines with which they must comply and establishes procedures for resolving disputes. It also provides disciplinary measures for participants who violate the 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: This amendment (1) establishes a new award structure; (2) reduces one of the registration fees; (3) removes grandfather language that is no longer applicable; (4) provide for uniform, rather than graduated, reductions or bonuses to the awards based on the amount of money in the fund; and (5) removes the requirement that violations of the regulation be committed "knowingly" in order to be actionable. The amendment creates a new award structure that allows the Fund to provide monetary rewards to a greater number of Kentucky breeders by: Reducing the award given to the breeders of the Kentucky Oaks and Kentucky Derby winners and reallocating those funds to other awards that reach a greater number of breeders; Providing equal awards for in-state and out-of-state maiden special weight, allowance and stakes races, dramatically increasing the number of eligible races for Kentucky breeders to earn awards; and Increasing the number of breeders eligible to earn awards through the claiming component from seven to twenty. The amendment also reduces the registration fee for horses registered between August 15th and December 31st of the breeding season from $750 to $150. The amendment removed language that specifically pertained to horses foaled during the 2006 breeding season because that language is no longer necessary. The amendment states that, in the event that there is not enough money to fund all of the awards, all awards shall be reduced proportionally, with the exception of the claiming component, the Kentucky Oaks award and the Kentucky Derby award, which shall always be fully funded. In the event that there is more money than necessary to fully fund the awards, the awards shall be increased proportionally, with the exception of the claiming component, the Kentucky Oaks award and the Kentucky Derby award, which shall not be entitled to a bonus.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to address economic changes within the breeding industry that have resulted in reductions in the total awards available since 2007. While other long-term funding solutions will be necessary for the Fund to remain competitive, the current amendments will spark additional interest from breeders world-wide and increase foal registration in the program. Further, the Fund is a new program and after 5 years of participant feedback and numerous public committee meetings with input from industry leaders and participants, it was determined the amendments were appropriate. Specifically, the changes address repeated breeder requests to include award categories that were not previously eligible; to tier awards from the top down to provide a gradual increase of awards as quality of race increases; and to restructure the claiming component to award a greater number of Kentucky breeders.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.800(2)(b) requires the commission to "promulgate administrative regulations establishing the conditions and criteria for the distribution of moneys from the fund." This regulation fulfills that statutory mandate.

(d) How the amendment will assist in the effective administration of the statutes: KRS 230.800(2)(a) states, "[T]he Kentucky Horse Racing Commission shall use moneys deposited in the Kentucky thoroughbred breeders incentive fund to administer the fund and provide rewards for breeders of horses bred and foaled in Kentucky." The amendment sets forth the rules regarding administration of the fund and the distribution of rewards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects thoroughbred breeders, boarding farm owners & employees, Kentucky veterinarians and equine health care facilities, horse transportation companies, farriers, farmers and suppliers of hay, feed and grain, equine supply companies providing medical sales, daily maintenance care and tack, Kentucky thoroughbred sale companies, equine tourism generating state/local room taxes for lodging, gasoline tax on travel and transportation of horses, farm equipment retail stores and maintenance services, state and local payroll tax generated by the above businesses state supported educational equine facilities as well as provides additional support to the 12 non-thoroughbred breeder incentive programs**.**

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Breeders will have to comply with the registration requirements in the regulation and will be subject to the disciplinary procedures if they violate any of its provisions. The remainder of the entities identified in question (3) will not have any responsibilities under the amendment but will simply reap the ben-

efits of a bigger and stronger breeding industry in the Commonwealth.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The only change in cost to breeders is the reduced registration fee for foals registered between August 15th and December 31st of the breeding year. It will cost $150 to register foals during this time period, as opposed to $750 under the previous regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): See response to question (2)(a).

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

(a) Initially: There will be an initial cost of making changes to the database that manages the award distribution plan. This will be completed in-house by state contracted labor; an expense shared with Alcoholic Beverage Control

(b) On a continuing basis: There will be no additional costs 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 nomination fees are used for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment reduced one of the nomination fees and left the others as is.

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to all participants.

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 230.800.

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 greatest increase to the state & local government will be the increase in payroll taxes by all participants noted in Regulatory Impact Analysis & Tiering Statement, Section (3).

(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? Continued growth and participation in the program will increase benefits to the state and local government on an annual basis.

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

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

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Heating, Ventilation, and Air Conditioning
(Amendment)

815 KAR 8:030. Apprentice heating, ventilation, and air conditioning (HVAC) mechanic registration and certification requirements.

RELATES TO: KRS 198B.650, 198B.656, 198B.658, 198B.662, 198B.664

STATUTORY AUTHORITY: KRS 198B.654(1), 198B.658(3)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.654(1) requires the Board of Heating, Ventilation and Air Conditioning Contractors to promulgate administrative regulations allowing unlicensed [~~requiring~~] persons engaged in [~~the business of~~] heating, ventilation and air conditioning (HVAC) [~~contracting~~] to be registered. This administrative regulation establishes the requirements for registration and certification of apprentices.

Section 1. Registration of Apprentices. (1) Except for those HVAC apprentices registered with the Division of Employment Standards, Department of Labor, all apprentices [~~apprentices, as~~] defined by KRS 198B.650, may [~~shall~~] be registered with the board by complying [~~and comply~~] with this administrative regulation.

(2) Each individual who registers [registered] with the board shall be issued an HVAC certificate of apprenticeship pursuant to KRS 198B.658(3) and this administrative regulation.

(3) The HVAC Apprentice Registration form shall be updated [~~biennially~~] by the apprentice and submitted to the board to update change of address or change of employer. [~~board:~~

~~(a) To indicate changes of address or employer; and~~

~~(b) To record work hours under the supervision of a master contractor.~~]

(4) The certificate of registration shall authorize an individual to work in the HVAC trade under: [~~under~~]

(a) The [~~the~~] direct supervision of at least one (1) journeyman HVAC mechanic; and [~~mechanic as well as the~~]

(b) The general supervision of a master contractor.

(5) The registration application [~~of registration~~] shall include the license number and signature of the supervising master contractor.

Section 2. Initial Application for Apprentice Certificate of Registration. Registration shall be accomplished by filing a completed "HVAC Apprentice Registration", Form HVAC 3, with the board including a passport sized photograph. The photograph submitted shall be taken within sixty (60) days of submitting application. [~~(1) Registration shall be accomplished by:~~

~~(a) Completing and filing the HVAC Apprentice Registration Form HVAC 3 with the board; and~~

~~(b) Submitting a passport-sized color photograph.~~

~~Section 3. Certificate Renewal Requirements. (1) Each apprentice shall renew the registration biennially by completing and filing the HVAC Apprentice Registration Form HVAC 3 no later than the last day of the certificate holder's birth month.~~

~~(2) Failure to be registered with the board shall disqualify an apprentice from work until the apprentice renews the registration.~~]

Section 3. [~~4.~~] Minimum Number of Hours of Experience. (1) 3,000 verifiable work hours shall be the [~~The~~] minimum number of work hours accepted as [~~to be completed by an apprentice as part of~~] the required two (2) years of experience [~~to apply~~] for an HVAC journeyman mechanic license pursuant to 815 KAR 8:020 [~~and shall be 3,000 work hours~~].

(2) The apprentice shall retain personal records of employment hours to verify [~~which substantiate~~] the experience required [~~necessary to apply~~] for a journeyman HVAC mechanic license.

Section 4. [~~5.~~] Incorporation by Reference. (1) [~~Form HVAC 3,~~] HVAC Apprentice Registration, Form HVAC 3, March, 2005, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the [~~Office~~] of Housing, Buildings and Construction, [~~HVAC~~] Division of HVAC, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Fri-

day, 8 a.m. to 4:30 p.m.

JERRY T. LUNSFORD, COMMISSIONER
ROBERT D VANCE, SECRETARY
APPROVED BY AGENCY: May 26, 2011
FILED WITH LRC: May 27, 2011 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2011, at 10:30 am, EDT, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405. Individuals interested in being heard at this hearing shall notify this agency in writing by July 14, 2011 (five working days prior to the hearing) of their intent to attend. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2011. 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) 573-0365 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 requirements for registration and certification of HVAC trade apprentices.

(b) The necessity of this administrative regulation: This amendment establishes the eligibility requirements and application procedures for registering as an HVAC trade apprentice with the Board of Heating, Ventilation and Air Conditioning Contractors.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation conforms to the statutes by establishing the standards and procedures to be followed for the registration of HVAC trade apprentices.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the standards and procedures authorized by statutes of the requirements for registering HVAC trade apprentices.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates and clarifies the HVAC apprentice registration program.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish procedures for HVAC apprentice registration.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 198B.654(1) and 198B.658(3)(a) requires the Board of HVAC Contractors to promulgate administrative regulations to create procedures governing the register of apprentices engaged in HVAC work. This amendment satisfies those statutory obligations.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies and sets forth apprentice application and registration requirements.

(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 HVAC, and applicants for apprentice registration.

(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 confirming that applications meet applicable requirements.

(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; this amendment merely clarifies the apprentice registration process.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants for licensure will continue to gain applicable experience towards licensure while being a registered apprentice.

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

(a) Initially: No additional costs anticipated to implement.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing agency funds of the Division of HVAC.

(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 associated with this regulation.

(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 HVAC 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 198B.654(1) and 198B.658(3)(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. 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. There are no revenues associated with this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years. There are no anticipated increases or decreases as there are no fees associated with this administrative regulation.

(c) How much will it cost to administer this program for the first year? The program's costs are anticipated to remain stable or potentially decrease.

(d) How much will it cost to administer this program for subsequent years? The program's costs are anticipated to remain stable or decrease.

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

Revenues (+/-): None
Expenditures (+/-): Neutral or negative
Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy
(Amendment)

900 KAR 7:040. Release of public data sets for health care discharge data.

RELATES TO: KRS 216.2920-216.2929
STATUTORY AUTHORITY KRS: 194A.050(1), 216.2923(2)(c), 216.2925(1), (2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 216.2923 mandates that the Cabinet for Health and Family Services publish and make available information relating to the health care delivery and finance system that is in the public interest. KRS 216.2927 mandates that personally identifying data collected by the Cabinet for Health and Family Services from health care providers not be released to the general public nor be allowed public inspection under KRS 61.870 to 61.884. This administrative regulation establishes the guidelines for distribution and publication of data collected by the cabinet pursuant to 900 KAR 7:030 [~~902 KAR 19:020~~], while maintaining patient confidentiality and further protecting personally identifying information.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 216.2920(2).
(2) "Data" means the information collected pursuant to 900 KAR 7:030 [~~902 KAR 19:020~~].
(3) "Encounter-level" means the data record of a single instance of hospitalization, outpatient service/ambulatory surgery, emergency department, or observation stay billing record contained in a data file.(4) "Health care provider" is defined by KRS 216.2920(5).
(5) "Public" means a person or group not directly responsible for the collection, maintenance, custody, or dissemination of data for purposes of this administrative regulation.
(6) "Report" means a summary or compilation of data disseminated to the public.

Section 2. Encounter-Level Data. (1) Notwithstanding the provisions of KRS 216.2927(3) regarding single copies of aggregate data, encounter-level data shall be released in the following standard file format described in the table below:

Encounter-Level Standard File Format - Data Element Contained in the File if information is available
File Type
Provider ID
Quarter & Year of Discharge
Patient Gender
Patient Age Group
Patient Race/Ethnicity
Patient Resident County
Type of Admission
Source of Admission
Diagnosis 1 (Primary)
Diagnosis 2
Diagnosis 3
Diagnosis 4
Diagnosis 5
Diagnosis 6
Diagnosis 7
Diagnosis 8
Diagnosis 9
Diagnosis 10
Diagnosis 11
Diagnosis 12
Diagnosis 13
Diagnosis 14
Diagnosis 15
Diagnosis 16
Diagnosis 17
Diagnosis 18
Diagnosis 19
Diagnosis 20
Diagnosis 21
Diagnosis 22
Diagnosis 23
Diagnosis 24
Diagnosis 25
Procedure 1[~~(Primary)~~]
Procedure 2
Procedure 3
Procedure 4
Procedure 5
Procedure 6
Procedure 7
Procedure 8
Procedure 9
Procedure 10
Procedure 11
Procedure 12
Procedure 13
Procedure 14
Procedure 15
Procedure 16
Procedure 17
Procedure 18
Procedure 19
Procedure 20
Procedure 21
Procedure 22
Procedure 23
Procedure 24
Procedure 25
Length of Stay
Total Charges
Discharge Status
Payer 1 (Primary)
Payer 2
Payer 3
Diagnostic related group
Medicare Severity - Diagnostic related group
Major Diagnostic Category
Diagnosis Version Qualifier
Event Code 1
Event Code 2
Do not resuscitate indicator
Diagnosis present on admission indicator

Section 3. Summary Data. (1) The cabinet shall not release data identified in KRS 216.2927.
(2) The cabinet may include the following data elements, in any combination thereof, for encounter-level, aggregate, and summary report formats:
(a) Diagnoses and procedures, primary, and any other level;
(b) Diagnosis and procedure groupings, including diagnostic related groups, major diagnostic categories, and agency for health care policy and research clinical classification system;
(c) Patient gender;
(d) Age or age grouping;
(e) Discharge status;
(f) Payor category, all levels;
(g) Charge information, total and ancillary;
(h) County of patient residence;
(i) County of provider;
(j) Ancillary department information;
(k) Length of stay, total, and average;
(l) External cause of injury;
(m) Race or ethnicity; or
(n)[~~(m)~~] Mortality rate. Reports including mortality rates shall be adjusted by severity of illness by reputable grouping software, either on a contract basis or by the cabinet.
(3) [~~At least thirty (30) working days prior to the release or dissemination of the reports identified in subsection (2) of this sec-~~

~~tion, the cabinet shall permit a health care provider identified in the report the opportunity to verify the accuracy of information pertaining to the provider. Within the thirty (30) day period, the provider may submit to the cabinet corrections or errors in the compilation of the data, with supporting evidence.~~

~~(4) The cabinet shall correct data found to be in error and shall include additional commentary as requested by the provider for major deviations in the individual provider's data from the statewide average.~~

~~(5)~~] Data shall not be withheld from the public or another interested party based solely on an unfavorable profile of a provider or group of providers, if the data is deemed reliable, accurate, and sufficiently free of error, as determined by the cabinet and pursuant to 900 KAR 7:030 [~~902 KAR 19:020, Section 5~~].

Section 4. Release of Data. (1) A person or agency shall, as a condition for receiving data from the cabinet, sign an "Agreement for Use of Kentucky Health Claims Data". A person or agency receiving data shall agree to adhere to the confidentiality requirements established in subsection (2) of this section and KRS 216.2927.

(2) To protect patient confidentiality:

(a) A report or summary of data that consists of five (5) or fewer records shall not be released or made public;

(b) A person or agency receiving data shall not redistribute or sell data in the original format;

(c) Distribution of data received by the cabinet shall be approved by the custodial agency prior to receipt of the data;

(d) The data collected pursuant to 900 KAR 7:030 [~~902 KAR 19:020~~] shall be used only for the purpose of health statistical reporting and analysis or as specified in the user's written request for the data; and

(e) A user shall not attempt to link the public use data set with an individually identifiable record from another data set.

Section 5. Fees. (1) The cabinet shall charge $1,500 for the purchase of a single copy of an annual, public-use data set.

(2) A public-use data set will be available for purchase no later than sixty (60) days after the end of the facility reporting period as established in 900 KAR 7:030 [~~902 KAR 19:020, Section 4~~]. Special requests for data shall be prioritized and completed at the discretion of the custodial agency.

Section 6. Incorporation by Reference. (1) "Agreement for Use of Kentucky Health Claims Data", September 2008 is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Office of Health Policy, 275 East Main Street 4WE, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

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: June 9, 2011

FILED WITH LRC: June 14, 2011 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 21, 2011, at 9:00 a.m. in the Public Health Auditorium located on the First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by July 14, 2011, 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 August 1, 2011. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carrie Banahan or Chandra Venettozzi, 564-9592.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the guidelines for distribution and publication of data collected by the cabinet pursuant to 900 KAR 7:030, while maintaining patient confidentiality and further protecting personally identifying information.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statute, KRS 216.2920-216.2929.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content KRS 216.2920-216.2929 by establishing the guidelines for distribution and publication of data collected by the cabinet pursuant to 900 KAR 7:030.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of KRS 216.2920-216.2929 by establishing the guidelines for distribution and publication of data collected by the cabinet pursuant to 900 KAR 7:030 while maintaining patient confidentiality and further protecting personally identifying 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: In 2008, the Cabinet began collecting additional diagnosis codes, procedure codes (the number increased from 9 to 25 codes), do not resuscitate indicators, and present on admission indicators. This amendment will also increase the number of diagnosis and procedure codes included in public use data sets as well as include the do not resuscitate indicators and present on admission indicators so that researchers are afforded the most comprehensive data to use for their analysis. Also Section 3, subsections 3 and 4 were deleted from this administrative regulation because facilities are granted the 30 day review period for corrections to data at the time of submission of data pursuant to 900 KAR 7:030.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to add new data elements to those currently provided in the public use data sets.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by providing new data elements that are now available to the Cabinet.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by providing new data elements to entities wishing to purchase public use data sets.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects an entity wishing to purchase a public use data set. Between July 1, 2009 and June 30, 2010, over twenty (20) entities purchased public use data sets.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: As the data being used to produce the public use data sets is already required to be submitted, no action will be required of regulated entities to comply with this amendment.

(b) In complying with this administrative regulation or amend-

ment, how much will it cost each of the entities identified in question (3): The cost to purchase a public use data set is unchanged in this amended regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Additional data sources and data elements will be provided to entities. This will allow entities the ability to conduct more detailed and thorough research and analysis.

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

(a) Initially: No additional costs will be incurred to implement this amendment as we already produce public use data sets as part of our normal operations.

(b) On a continuing basis: No additional costs will be incurred to implement this amendment on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation and enforcement of this administrative regulation will be from Office of Health Policy's existing budget. As stated above, the public used data sets are already produced as part of our normal operations so no additional funding will be required.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not increase any fees. The fee for purchasing a public use data set remains unchanged by this amendment.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects the Office of Health Policy within the Cabinet for Health and Family Services.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216.2920-216.2929.

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? Between July 1, 2009 and June 30, 2010 the Office of Health Policy collected $49,500 from the sale of public use data sets. With the additional data elements we anticipate that we will collect similar amounts after the implementation of the amendment. Note: revenues collected from the sale of public use data sets are deposited in a restricted funds account within Office of Health Policy and are used for future payment to collect data specified in 900 KAR 7:030.

(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? We anticipate the revenue for subsequent years will remain similar to past years: approximately $49,500 per year. Note: revenues collected from the sale of public use data sets are deposited in a restricted funds account within Office of Health Policy and are used for future payment to collect data specified in 900 KAR 7:030.

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

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this amendment on a continuing basis.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Office of Financial Management
(Repealer)

200 KAR 21:031. Repeal of 200 KAR 21:030.

RELATES TO: KRS 45A.843, 45A.853, 45A.873
STATUTORY AUTHORITY: KRS 45A.873(1)(b), 45A.879
NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.873 was repealed by 2010 Ky. Acts ch. 162, sec. 25; therefore, the provisions in 200 KAR 21:030 are now obsolete. This administrative regulation acts specifically to repeal 200 KAR 21:030.

Section 1. 200 KAR 21:030, Calculating the preference for Kentucky bond counsel firms for state bond issues, is hereby repealed.

F. THOMAS HOWARD, Executive Director
APPROVED BY AGENCY: June 9, 2011
FILED WITH LRC: June 10, 2011 at 2 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on July 28, 2011 at 10:00am to 12:00 p.m. in room 386 of the Capitol Annex, 702 Capitol Avenue, Frankfort, Kentucky 40601. Individuals interested in being heard at the hearing shall notify this agency in writing at least 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by close of business on July 21, 2011, 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 August 1, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON: DeVon Hankins, Policy Advisor, 392 Capital 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: This administrative regulation repeals 200 KAR 21:031.
(b) The necessity of this administrative regulation: KRS 45A.873 was repealed by 2010 Ky. Acts ch. 162, sec. 25. 200 KAR 21:030 was promulgated to effectuate the provisions of that statute which required certain preferences for Kentucky firms providing bond counsel services. Kentucky resident bidder preference laws, enacted in the same Act, now apply to all state contracts and can be found in KRS 45A.490 – 45A.494 and are applied through 200 KAR 5:400.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statute, KRS 45A.873, has been repealed which, as a result, requires that 200 KAR 21:030 be repealed.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Repealing 200 KAR 21:030 will discontinue a process no longer authorized 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 necessity of the amendment to this administrative regulation: N/A.
(b) How the amendment conforms to the content of the authorizing statutes: N/A.
(c) How the amendment will assist in the effective administration of the statutes: N/A.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any bond issuing agencies of the Commonwealth as described in KRS 45A.840(3). Bond counsels are also affected.
(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: Kentucky resident bond counsels will still be able to take advantage of the reciprocal preference law in KRS 45A.490 – 45A.494, although the definition of resident bidder has been changed from the previous law.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No additional cost.
(b) On a continuing basis: No additional cost.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: No additional funding necessary.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees associated with this regulation.
(9) TIERING: Is tiering applied? No. The repealed regulation applied equally to all bond counsels who wished to receive resident bidder preference in the award of bond counsel services for the Commonwealth.

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? Any bond issuing agencies of the Commonwealth as described in KRS 45A.840(3).
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. N/A. The authorizing statute, KRS 45A.873, has been repealed
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 repealer and the regulation to be repealed have no direct effect on expenditures and 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 repealer and the regulation to be repealed do 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 repealer and the regulation to be repealed do not generate revenue.
(c) How much will it cost to administer this program for the first year? N/A. The regulation will be repealed so there is no program to administer.
(d) How much will it cost to administer this program for subsequent years? The regulation will be repealed so there is no program to administer.
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:

GENERAL GOVERNMENT CABINET
Kentucky Board of Optometric Examiners
(New Administrative Regulation)

201 KAR 5:110. Expanded therapeutic procedures.

RELATES TO: KRS 320.210(2) and 320.240(4), (5), and (7)

STATUTORY AUTHORITY: KRS 320.210(2) and 320.240(4), (5), and (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 320.240(4) grants the Kentucky Board of Optometric Examiners the authority to promulgate reasonable regulations and the board's administrative regulations shall include the classification and licensure of optometrists by examination and credentials. KRS 320.240(5) requires a therapeutically licensed optometrist to meet educational and competence criteria set forth by the board in order to perform expanded therapeutic procedures, and evidence of proof of continuing competency shall be determined by the board. This administrative regulation establishes the educational and competence criteria necessary for a therapeutically licensed optometrist to perform expanded therapeutic procedures.

Section 1. Qualifications for Kentucky Licensed Optometrists to be Credentialed to Utilize Expanded Therapeutic Procedures. (1) A Kentucky licensed optometrist shall not be credentialed to perform expanded therapeutic procedures unless:

(a) The optometrist provides proof that the optometrist holds an active license in good standing by another state and is also credentialed by that state to perform expanded therapeutic procedures; or

(b) The optometrist is currently therapeutically certified in Kentucky and shall:

1. Provide proof of completion of a course approved by the Board that shall consist of didactic instruction and clinical experiences as outlined below:

Class room instruction covering:

(a) Laser Physics, Hazards and Safety;

(b) Biophysics of laser;

(c) Laser application in Clinical Optometry;

(d) Laser Tissue Interactions;

(e) Laser Indications, Contraindications and Potential Complications;

(f) Gonioscopy;

(g) Laser Therapy for Open Angle Glaucoma;

(h) Laser Therapy for Angle Closure Glaucoma;

(i) Posterior Capsulotomy;

(j) Common complications: Lids, Lashes, Lacrimal;

(k) Medicolegal Aspects of Anterior Segment Procedures;

(l) Peripheral Iridotomy;

(xiii) Laser Trabeculoplasty

(m) Minor surgical procedures;

(n) Overview of surgical instruments, Asepsis and OSHA;

(o) The surgical anatomy of the Eyelids;

(p) Emergency Surgical Procedures;

(q) Chalazion Management;

(r) Epilumeninesence Microscopy;

(s) Suture techniques;

(t) Local anesthesia: techniques and complications;

(u) Anaphylaxis and other office emergencies;

(v) Radiofrequency Surgery;

(x) Post-operative Wound Care;

(y) Pass a written test utilizing the National Board of Examiners in Optometry format.

2. Clinical/Laboratory experience including:

(a) Video Tape Demonstration;

(b) In Vitro Observation/participation;

(c) In Vivo Observation; and

(d) A formal Clinical/Laboratory Practical Examination.

(2) Prior to an optometrist being credentialed to perform an anterior segment laser procedure permitted under KRS 320, qualifications as stated in Section 1(1)(a) or (b) must be met. After observation of anterior segment laser procedures by the optometrist, the following documentation is required to be submitted to the Board:

(a) The anterior segment laser procedure shall be performed by the optometrist in the presence of a Board approved qualified preceptor;

(b) The optometrist shall demonstrate clinical proficiency in the performance of the procedure to the satisfaction of the Board approved qualified preceptor; and

(c) The Board approved qualified preceptor shall document in writing the preceptor's observations of the optometrist's performance and state that the optometrist has satisfactorily demonstrated his knowledge and qualifications in the performance of the procedure.

(3) Board approved courses must be provided in conjunction with an accredited optometry or medical school and the sponsor must meet the standards of 201 KAR 5:030. The content of the course may be updated as necessary as determined by the Board.

(4) It shall be the position of the Board that performing expanded therapeutic procedures without credentialing based upon the education requirements outlined in this administrative regulation Section (1) shall be grounds for discipline under the requirements of the KRS 320.310(1).

(5) Injections into the posterior segment/chamber or retinal tissue to treat any macular or retinal disease are not allowed under KRS 320.210(2)(b)16.

(6) Any eyelid or adnexal lesion found to be malignant shall be referred to a practitioner trained and qualified to treat such lesions.

Section 2. Qualifications for Initial Optometric Licensees to be Credentialed to Utilize Expanded Therapeutic Procedures. An initial Kentucky license holder shall not be credentialed to perform expanded therapeutic procedures unless`

(1) The applicant has graduated from an optometry school that demonstrates that the applicant has received the education and training equivalent to that set out in Section 1 of this administrative regulation, above and

(2) The applicant demonstrates proficiency in testing required by the Board, or

(3) By first licensure renewal, licensee must provide proof of compliance with Section 1 of this administrative regulation.

Section 3. Qualifications for Applicants for Licensure by Endorsement to be Credentialed to Utilize Expanded Therapeutic Procedures. An applicant for licensure by endorsement shall not be credentialed to perform expanded therapeutic procedures unless:

(1) The applicant provides proof that the applicant holds an active license in good standing by another state and is also credentialed by that state to perform expanded therapeutic procedures; or

(2) By first licensure renewal, licensee must provide proof of compliance with Section 1 of this administrative regulation.

Section 4. Annual Course of Study. (1) In addition to the continuing education credit hours required by 201 KAR 5:030 Section 1(1) and (2)(a) and (b), an optometrist who is credentialed by the Board to perform expanded therapeutic procedures shall attend a minimum of five (5) additional contact credit hours in expanded therapeutic procedures, for a total of twenty (20) continuing education credits.

(2) None of the five (5) required contact credit hours in expanded therapeutic procedures may be obtained through the internet.

JERALD COMBS, President

APPROVED BY AGENCY: June 11, 2011

FILED WITH LRC: June 13, 2011 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2011 at 9:00 a.m. at the Embassy Suites, Fayette Room, 1st floor, 1801 Newtown Pike, Lexington, Kentucky 40511. Individuals interested in attending this hearing shall notify this agency in writing by 4:30 p.m. on July 14, 2011, five workdays prior to this 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 will be given an opportunity to comment on the proposed administrative regulation.

A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 4:30 p.m. on August 1, 2011.Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Connie Calvert, Executive Director, Kentucky Board of Optometric Examiners, 163 W. Short St., Suite 550, Lexington, Kentucky 40507, phone (859) 246-2744, fax (859) 246-2746.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Connie Calvert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets out the clinical and competence criteria for an optometrist to engage in expanded therapeutic procedures.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with KRS 320.240(4) and (5).

(c) How this administrative regulation conforms to the content of the authorizing statues: The regulation is in conformity with the authorizing statutes that require the board to promulgate administrative regulations governing clinical and competence criteria before an optometrist may engage in expanded therapeutic procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets out the clinical and competence criteria for an optometrist to engage in expanded therapeutic procedures.

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

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

(b) The necessity of the amendment to this administrative regulation: N/A

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board expects approximately 300 optometrists to seek authority to engage in expanded therapeutic procedures.

(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: An optometrist shall be permitted to engage in expanded therapeutic procedures if credentialed to perform expanded therapeutic procedures in another state or the optometrist has been therapeutically licensed in Kentucky, has completed a Board approved course, and has satisfied Board required clinical experience components.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost of didactic education and clinical experience shall be approximately $2000.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The optometrists that comply with the educational and clinical experience requirements shall be permitted to engage in expanded therapeutic procedures.

(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 Board to implement the changes.

(b) On a continuing basis: No new costs will be incurred by the Board to implement the changes.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all optometrists seeking the ability to engage in expanded therapeutic procedures.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation would impact the Kentucky Board of Optometric Examiners and its licensees who wish to engage in expanded therapeutic procedures.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 320.240(4) and (5) require and 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 administrative regulation is to be in effect. The Board does not expect a difference in expenditures and revenues for the first year the administrative regulation is in effect.

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? 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
Kentucky Department of Fish and Wildlife Resources
(New Administrative Regulation)

301 KAR 2:228. Sandhill crane hunting requirements.

RELATES TO: KRS 150.010, 150.305, 150.340, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.170(3)(4), 150.330, 150.603(2), 50 C.F.R. 20, 21

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.170(3)(4) authorizes license exemptions for people under twelve (12) and resident owners of farmlands, including their spouses and dependent children who hunt on those farmlands. KRS 150.330 authorizes take and possession of migratory birds when in compliance with the provisions of the Federal Migratory Bird Treaty Act and authorizes hunting of migratory birds with the appropriate permits. KRS 150.603(2) re-

quires a person sixteen (16) years or older to possess a hunting license and a Kentucky migratory game bird permit or waterfowl permit in order to hunt migratory birds. This administrative regulation establishes the requirements for taking sandhill cranes within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

Section 1. Definitions. "Wildlife Management Area" or "WMA" means a tract of land that:

(1) Is controlled by the department through ownership, lease, license, or cooperative agreement; and

(2) Has "Wildlife Management Area" or "WMA" as part of its official name.

Section 2. Applications and Permits. (1) To apply for a sandhill crane hunting permit a person shall:

(a) Complete the online application process on the department's Web site between October 15 and October 31;

(b) Unless exempt pursuant to KRS 150.170, purchase a hunting license by October 31;

(c) Pay a three (3) dollar application fee; and

(d) Not apply more than once.

(2) The department shall:

(a) Issue a maximum of 400 sandhill crane hunting permits;

(b) Select each permit recipient with a random electronic draw from all qualified applicants;

(c) Issue each permit via the department's Web site at http://fw.ky.gov;

(d) Issue two (2) metal leg tags to each permit recipient prior to the crane hunting season.

(e) Disqualify an applicant who does not possess a hunting license prior to October 31, unless exempted by KRS 150.170; and

(3) A person who does not have access to the internet may call the department's toll-free number at 1-800-858-1549 for assistance in applying.

(4) A sandhill crane hunting permit shall not be transferable.

(5) A person selected to receive a permit shall pass a bird identification test provided by the department prior to receiving a permit;

(6) A permit recipient shall complete and submit a post-season crane hunting survey on the department's website no later than January 25.

(7) A person who fails to complete the post-season survey by the date specified in subsection 6 of this section shall be ineligible to be drawn the following year.

Section 3. Season, Bag Limits, and Hunting Requirements. (1) Unless exempted by KRS 150.170, a person shall not hunt a sandhill crane without:

(a) A valid Kentucky hunting license;

(b) A valid Kentucky sandhill crane hunting permit; and

(c) A Kentucky migratory bird permit; or

(d) A Kentucky waterfowl permit.

(2) A permit recipient shall possess a printed copy of a valid crane hunting permit:

(a) While crane hunting; and

(b) When in possession of a harvested crane.

(3) The season shall:

(a) Begin on the Saturday closest to December 15 for thirty (30) consecutive days; or

(b) End at sunset on the day when a harvest of 400 sandhill cranes is projected to be attained;

(4) The department shall notify hunters on the day that the crane season has closed by:

(a) Providing a pre-recorded message on the department's toll-free number at 1-800-858-1549; and

(b) Posting the closure on the department's Web site.

(5) A permit recipient shall be responsible for checking if the crane season is closed on a daily basis prior to hunting cranes.

(6) The season bag limit shall be two (2) cranes per person.

(7) A person shall only hunt sandhill cranes from sunrise to sunset.

(8) A person shall check a harvested sandhill crane by:

(a) Attaching one (1) of the department-issued metal tags to the leg of the harvested crane prior to moving the carcass;

(b) Calling 1-877-245-4263 on the day the sandhill crane is harvested;

(c) Providing the information requested by the automated check-in system; and

(d) Recording and retaining the check-in confirmation number for the rest of the current season.

(9) A hunter who has harvested a crane shall possess the check-in confirmation number when in the field during the current season.

(10) A person shall not knowingly falsify a harvested crane on the automated check-in system.

(11) A person hunting sandhill cranes shall not use or possess a shotgun shell containing:

(a) Lead shot; or

(b) Shot not approved by the U.S. Fish and Wildlife Service for waterfowl hunting.

(12) A person shall not use the following to take sandhill cranes:

(a) A shotgun larger than ten (10) gauge;

(b) A shotgun shell larger than three and one-half (31/2) inches; or

(c) A shotgun shell with shot larger than size "T".

(13) A person hunting a sandhill crane on a Wildlife Management Area shall comply with the applicable WMA waterfowl hunting requirements, pursuant to 301 KAR 2:222, except that on Barren River WMA sandhill crane hunting shall be prohibited on crane refuge areas that are delineated by signage and buoys.

BENJY KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: June 3, 2011

FILED WITH LRC: June 15, 2011

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2011, 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 August 1, 2011. 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 the administrative regulation does: This administrative regulation establishes a hunting season for the Eastern Population of sandhill cranes, sets bag and season limits and requirements on public lands within federal migratory bird hunting frameworks established in 50 C.F.R. Part 20 according to the U.S. Fish and Wildlife Service.

(b) The necessity of the administrative regulation: The necessity of this administrative regulation is to establish the 2011–2012 sandhill crane hunting season in accordance with the U.S. Fish and Wildlife Service, Mississippi Flyway Council, and the department's management objectives.

(c) How does this administrative regulation conform to the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons

for the taking of wildlife and to regulate bag limits. KRS 150.330 authorizes take and possession of migratory birds when in compliance with the provisions of the Federal Migratory Bird Treaty Act and authorizes hunting of migratory birds with the appropriate permits. KRS 150.603(2) requires a person sixteen (16) years or older to possess a hunting license and a Kentucky migratory game bird permit or waterfowl permit in order to hunt migratory birds.

(d) How will this administrative regulation assist in the effective administration of the statutes: By establishing a sandhill crane hunting season and area-specific requirements, this administrative regulation will ensure management of the Eastern Population of sandhill cranes is consistent with state statutes and state, national, and international management objectives identified in the management plan.

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

(a) How the amendment will change the existing administrative regulation: N/A. This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How does the amendment conform to 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 that will be affected: There are approximately 50,000 migratory bird hunters and 20,000 waterfowl hunters in Kentucky that will likely be affected by this administrative regulation, but all legal hunters are eligible to apply for one of the sandhill crane 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 of 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 interested in hunting sandhill cranes will need to possess a valid Kentucky hunting license prior to September 30 unless exempt, pay a three (3) dollar application fee, and complete an online application process on the department's website. Those hunters who are successful in the random computerized draw will also be required to complete a bird identification test in order to legally participate in crane hunting. Hunters will also be required to possess either a migratory bird permit or a waterfowl permit to be legal.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs to those identified in question (3) other than the $3.00 application fee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Hunters will have an increased opportunity to pursue a new game species in Kentucky.

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

(b) Initially: This administrative regulation will result in a negligible administration cost to the department.

(c) On a continuing basis: There will be a negligible cost on a continuing basis.

(6) What is the source of funding to be used for 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 funding to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: Other than the $3.00 application fee, no new fees will be established.

(9) TIERING: Is tiering applied? Tiering was not applied. The same guidelines and limits apply to all hunters wanting to hunt sandhill cranes.

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's Divisions of Wildlife and Law Enforcement will be impacted.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1), KRS 150.330, and KRS 150.603(2), authorize this regulation. 50 C.F.R. Part 20 specifies the federal season frameworks. 50 C.F.R. Part 21 defines permits and the necessary requirements to hold and possess migratory game birds.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No direct revenue will be generated by this administrative regulation during the first year; however, this increased hunting opportunity may have a positive economic impact at a local level.

(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 department does not anticipate a direct increase in revenue by this administrative regulation during subsequent years; however, this increased hunting opportunity may have a positive economic impact at a local level.

(c) How much will it cost to administer this program for the first year? There will be a small cost incurred for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be a small cost 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:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Wildlife and Fisheries, Federal Code of Regulations, 50 C.F.R. Part 20, Migratory Bird Hunting; Part 21, Migratory Bird Permits.

2. State compliance standards. The Department of Fish and Wildlife Resources sets migratory birds seasons which are within the guidelines of the Eastern Population of sandhill crane management plan approved jointly by the Atlantic and Mississippi Flyway Councils and the frameworks established by the U.S. Fish and Wildlife Service and published in 50 C.F.R. Part 20, 21.

3. Minimum or uniform standards contained in the federal mandate. 50 C.F.R. Part 20 contains season frameworks for the earliest opening and latest closing date, the maximum number of days open to hunting, and daily bag and possession limits. 50 C.F.R. Part 21 defines permits and the necessary requirements to hold and possess migratory game birds before, during and after periods open for hunting.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate defines the maximum permitted under the federal regulations. States are permitted to be more conservative but not more liberal in their respective regulations. State management objectives necessitate more conservative regulations to protect local, regional and/or state stocks of birds important to Kentucky's migratory bird

hunters. The largest concentration of wintering and migrating sandhill cranes is located on public lands managed by the department. The department imposes more restrictive hunting regulations on these lands in effort to meet international migratory bird management objectives while still providing quality hunting opportunity consistent with population objectives established in the management plan.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing
(New Administrative Regulation)

601 KAR 11:035. Waiver of skills test for military personnel.

RELATES TO: KRS 281A, 49 C.F.R. 383
STATUTORY AUTHORITY: Ky. Ch. 20
NECESSITY, FUNCTION, AND CONFORMITY: Ky. Ch. 20 requires the Transportation Cabinet to promulgate an administrative regulation to establish an application form for military personnel applying for a commercial driver's license and requesting the waiver of a skills test. This administrative regulation establishes an application form and the procedures for submitting the form to the cabinet.

Section 1. Waiver Form. (1) An applicant for a commercial driver's license who meets the criteria established in Ky. Ch. 20 may apply for a skills test exemption. If the applicant applies, the applicant shall complete a Military Certification for Skills Test Exemption, TC Form 94-167.
(2) A completed application form shall be submitted to the Transportation Cabinet, Department of Vehicle Regulation, 200 Mero Street, Frankfort, Kentucky 40622.

Section 2. Notification. (1) Within thirty (30) days of submission to the cabinet, an applicant shall be notified by mail of the approval or disapproval.
(2) An applicant shall take the notification of an approved application form to the circuit clerk's office for his or her county of residence. Section 3. Incorporation by Reference. (1) "Military Certification for Skills Test Exemption", TC Form 94-167, June, 2011, is incorporated by reference.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Vehicle Regulation, 200 Mero Street, Frankfort, Kentucky 40622. This material may also be obtained by accessing the cabinet's Web site at http://transportation.ky.gov/.

T.O. ZAWACKI, Commissioner
MIKE HANCOCK, Commissioner
APPROVED BY AGENCY, June 14, 2011
FILED WITH LRC, June 14, 2011 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2011 at 10:00 a.m. local time at the Transportation Cabinet, Transportation Cabinet Building, Hearing Room C121, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement five working days prior to the hearing. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 1, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.
CONTACT PERSON: D. Ann DAngelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ann DAngelo
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes a form and procedures for military personnel applying for a commercial driver's license and requesting the waiver of a skills test.
(b) The necessity of this administrative regulation: The cabinet is required by statute to promulgate an administrative regulation to establish a form.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation establishes a form as required by Ky. Ch. 20.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will insure that military applicants are informed of the correct form and procedures if they are applying for a commercial driver's license and wish to obtain a waiver of the skills test.
(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: Military personnel who apply for a commercial driver's license; Division of Driver Licensing; Circuit Clerks.
(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: by completing the form established by this regulation, military personnel can obtain a waiver of the skills test if they are applying for a CDL. The Division of Driver Licensing will receive the submitted form and either approve or disapprove. The
results will be mailed to the applicant within thirty (30) days. An approved form will be taken by military personnel to the Circuit Clerk's office.
(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 costs involved with this regulation.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Military personnel will have the correct form to complete so that they can receive a waiver of the skills test.
(5) Provide an estimate of how much it will cost the administrative body to implement the administrative regulation: There are no costs associated with implementing these amendments.
(a) Initially:
(b) On a continuing basis:
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There are no costs associated with implementation and enforcement of this regulation.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fees are necessary.
(8) State whether or not this administrative regulation estab-

lished any fees or directly or indirectly increased any fees: No fees are established by this regulation either directly or indirectly.

(9) TIERING: Is tiering applied? No. Tiering is not applied. All military personnel applying for a CDL may complete the form if they believe they qualify for a waiver of the skills test.

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 Driver Licensing and the Circuit Clerk's offices.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Ky. Ch. 20

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 effects on expenditures and revenues are expected.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This 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 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
Kentucky Board of Education
Department of Education
(New Administrative Regulation)

702 KAR 6:110. Claim reimbursement for school and community nutrition programs.

RELATES TO: KRS 156.070(5); 7 C.F.R. 210.8, 7 C.F.R. 220.11, 7 C.F.R. 225.9, 7 C.F.R. 226.10; 42 U.S.C. 1751, 42 U.S.C. 1761, 42 U.S.C. 1766, 42 U.S.C. 1773.

STATUTORY AUTHORITY: KRS 13A.130, KRS 156.070(5), KRS 156.130, 7 C.F.R. 210.8(b)(1), 220.11(b), 225.9(d)(6), 226.10(e).

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070(5) requires the Kentucky Board of Education to promulgate administrative regulations governing the operation of programs within the Department of Education. 7 C.F.R. 210.8(b)(1); 7 C.F.R. 220.11(b); 7 C.F.R. 225.9(d)(6); 7 C.F.R. 226.10(e) provides the Department of Education with the authority to establish deadlines for claim reimbursement for federal nutrition programs. This administrative regulation establishes the claims deadlines for these programs.

Section 1. Definitions. (1) "Application" means the online application completed by the sponsor that has been reviewed and approved by the Division of School of School and Community Nutrition ("SCN").

(2) "Online Reporting System" means the Web-based computer application used for claims processing and maintenance of the application/agreement.

(3) "Sponsor" means an entity approved to participate in a nutrition program that is administered by SCN.

Section 2. Submission of Monthly Claims. To be entitled to reimbursement under this part, each participating sponsor shall submit a monthly Claim for Reimbursement to SCN.

Section 3. Submission Timeframes. A final Claim for Reimbursement shall be postmarked or submitted to SCN no later than 11:59 p.m. Eastern time on the 15th of the month following the month covered by the claim to be considered a timely filing. Claims not postmarked and/or submitted by the claims deadline shall not be considered a timely claim by SCN unless otherwise authorized. Corrected claims must be submitted on the 30th of the month following the month covered by the claim to be considered a timely filing and must be accompanied by a Corrective Action Plan.

Section 4. Claim verification. The claim shall be signed by an authorized official of the sponsor.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

TERRY HOLLIDAY, Ph.D., Commissioner
DAVID KAREM, Chairperson

APPROVED BY AGENCY: June 15, 2011

FILED WITH LRC: June 15, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on July 29, 2011, at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 1, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kevin C. Brown, General Counsel, Kentucky Department of Education, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321 or email at kevin.brown@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the claims deadline for claim reimbursement for federal nutrition programs.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to codify the Division of School and Community Nutrition's long-standing written policy.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 156.070(5) requires the Kentucky Board of Education to promulgate administrative regulations governing the operation of programs within the Department of Education. 7 C.F.R. 210.8(b)(1); 7 C.F.R. 220.11(b); 7 C.F.R. 225.9(d)(6); 7 C.F.R. 226.10(e) provides the Department of Education with the authority to establish deadlines for claim reimbursement for federal nutrition programs that will have the force of law.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides specific deadlines for claim reimbursement for federal nutrition programs.

(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 an amendment.

(b) The necessity of the amendment to this administrative regulation: Not an amendment.

(c) How the amendment conforms to the content of the authorizing statute: Not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: Not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Regulated entities (public and private school districts, for profit and non-profit day cares, and residential child care institutions) participating in federal nutrition programs.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The proposed regulation will have no real impact because this regulation does not represent a departure from current practice and policy.

(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 be required to continue filing claims for reimbursement in accordance with longstanding written policy.

(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 regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): 15-day claim window works to ensure sponsors are paid in a timely manner and maintain a positive cash flow.

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

(a) Initially: The proposed regulation results in no cost to the Kentucky Department of Education.

(b) On a continuing basis: The proposed regulation results in no additional costs to the Kentucky Department of Education.

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all regulated 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? School districts.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.070(5) requires the Kentucky Board of Education to promulgate administrative regulations governing the operation of programs within the Department of Education. 7 C.F.R. 210.8(b)(1); 7 C.F.R. 220.11(b); 7 C.F.R. 225.9(d)(6); 7 C.F.R. 226.10(e) provides the Department of Education with the authority to establish deadlines for claim reimbursement for federal nutrition programs.

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

(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:

EDUCATION CABINET
Kentucky Board of Education
Department of Education
(Repealer)

704 KAR 3:341. Repeal of 704 KAR 3:340.

RELATES TO: KRS 156.070, 156.160

STATUTORY AUTHORITY: KRS 156.070

NECESSITY, FUNCTION, AND CONFORMITY: This is to repeal administrative regulation 704 KAR 3:340, Commonwealth Diploma Program. Effective academic year 2012-13, this administrative regulation is no longer required. The original intent of the Commonwealth Diploma program was to increase the number of students participating in rigorous Advanced Placement and International Baccalaureate courses. This goal has been met through an increase in over 5000% of students taking these courses. The revision of 704 KAR 3:305, Minimum High School Graduation Requirements, increased the rigor of a standard diploma. Districts already have the statutory authority to increase the graduation requirements outlined in 704 KAR 3:305 and may recognize students for individual achievement accordingly, including the same requirements as the Commonwealth Diploma.

Section 1. 704 KAR 3:340 is hereby repealed.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

TERRY HOLLIDAY, Ph.D., Commissioner
DAVID KAREM, Chairperson

APPROVED BY AGENCY: June 15, 2011

FILED WITH LRC: June 15, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on July 28, at 10:00 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 1, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to

CONTACT PERSON: Kevin C. Brown, General Counsel, Kentucky Department of Education, First Floor, Capital Plaza Tower,

500 Mero Street, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321 or email at kevin.brown@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation repeals 704 KAR 3:340 Commonwealth Diploma Program.

(b) The necessity of this administrative regulation:

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation repeals 704 KAR 3:341.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation repeals 704 KAR 3:341.

(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 repeals 704 KAR 3:341.

(b) The necessity of the amendment to this administrative regulation: Not an amendment.

(c) How the amendment conforms to the content of the authorizing statute: Not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: Not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Public school districts in Kentucky that have the Commonwealth Diploma program (98 out of 174) and the students within that district who would have earned the Diploma. This is approximately three percent of public school seniors in Kentucky. Private schools (22) and 266 private school students have been participating in the program as well.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: Students who would have earned the Commonwealth Diploma after 2011-12 school year (approximately 1500 if current trends hold true) will not have the opportunity after the 2011-2012 school year. However, a new program will be considered by the KBE to take its place. The Commonwealth Diploma program regulation was permissive. Therefore, school districts can continue the program if they choose to do so without state support.

(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: KDE will notify school districts of the repeal and school districts will notify students and parents of the repeal. This will be a workload reduction for schools and districts currently participating in the program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to the School Districts or the Commissioner of Education other than minimal administrative costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Districts and schools will not have the added responsibilities that come along with coordinating the Commonwealth Diploma program unless they choose to continue the awarding of the Commonwealth recognition without state support.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: no cost

(a) Initially: no cost

(b) On a continuing basis: no cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No cost. Funds that have previously been held back from districts to fund the program will be reallocated to districts

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KBE general authority

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no additional revenue generated by this administrative regulation. The amount of money spent on this regulation would be minimal administrative cost and districts have some state monies reallocated to them that have previously been held back to fund this 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? 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? minimal administrative costs.

(d) How much will it cost to administer this program for subsequent years? Nothing However, a program may be proposed to take its place and that would require expenditure of resources for districts but regulation would be permissive.

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

Revenues (+/-): none

Expenditures (+/-): minimal administrative costs

Other Explanation:

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

810 KAR 1:145. Advance deposit account wagering.

RELATES TO: KRS 230.260, 230.290, 230.310, 230.320

STATUTORY AUTHORITY: KRS 230.215, 230.260, 230.310, 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260(2) authorizes the Kentucky Horse Racing Commission to issue licenses to any person or entity that offers advance deposit account wagering to Kentucky residents. This administrative regulation establishes the license application procedures and requirements to offer advance deposit account wagering to Kentucky residents.

Section 1. Definitions. (1) "Account" means an account for advance deposit account wagering with a specific identifiable record of deposits, wagers, and withdrawals established by an account holder and managed by the advance deposit account wagering licensee.

(2) "Account holder" means an individual who successfully completed an application and for whom the advance deposit account wagering licensee has opened an account.

(3) "Advance deposit account wagering" is defined by KRS 230.210(1).

(4) "Advance deposit account wagering licensee" is defined by

KRS 230.210(2).

(5) "Applicant" means an individual, person, or entity that has submitted an application for a license pursuant to this administrative regulation.

(6) "Association" is defined by KRS 230.210(5).

(7) "Confidential information" means:

(a) The amount of money credited to, debited from, withdrawn from, or present in any particular account holder's account;

(b) The amount of money wagered by a particular account holder on any race or series of races;

(c) The account number and secure personal identification code of a particular account holder;

(d) The identities of particular racing associations on which the account holder is wagering or has wagered; and

(e) Unless otherwise authorized by the account holder, the name, address, and other information in the possession of the advance deposit account wagering licensee that would identify the account holder to anyone other than the commission or the advance deposit account wagering licensee.

(8) "Individual" means a natural person, at least eighteen (18) years of age, but does not include any corporation, partnership, limited liability company, trust, or estate.

(9) "Kentucky resident" is defined by KRS 230.210(12).

(10) "Nominal change in ownership" is defined by 810 KAR 1:037 Section 1(1).

(11) "Person" means any corporation, whether organized for profit or not, partnership, limited liability company, trust, estate, association, joint venture, or any other group or combination acting as a unit.

(12) "Principal" means any of the following individuals associated with a partnership, trust association, limited liability company, or corporation:

(a) The chairman and all members of the board of directors of a corporation;

(b) All partners of a partnership and all participating members of a limited liability company;

(c) All trustees and trust beneficiaries of an association;

(d) The president or chief executive officer and all other officers, managers, and employees who have policy-making or fiduciary responsibility within the organization;

(e) All stockholders or other individuals who own, hold, or control, either directly or indirectly, five percent (5%) or more of stock or financial interest in the collective organization; and

(f) Any other employee, agent, guardian, personal representative, or lender or holder of indebtedness who has the power to exercise a significant influence over the applicant's or licensee's operation.

(13) "Substantial change in ownership" is defined by 810 KAR 1:037, Section 1(4).

(14) "Telephone account wagering" is defined by KRS 230.210(19).

(15) "Totalizator" or "Totalizator system" 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.

Section 2. License required to conduct advance deposit account wagering.

(1) New license applications. Any individual, person, or entity, other than a licensed association engaged in telephone account wagering as defined in KRS 230.210(19) and addressed in KRS 230.378 and KRS 230.379, that offers advance deposit account wagering to Kentucky residents shall apply to the commission for a license pursuant to KRS 230.260(2). Deadlines for new license applications shall be as follows:

(a) Any individual, person, or entity that offered advanced deposit account wagering to Kentucky residents prior to {EFFECTIVE DATE OF REG}, shall apply to the commission for a license by submitting a completed "Initial/Renewal License Application to Conduct Advance Deposit Account Wagering" on or before {60 DAYS AFTER EFFECTIVE DATE}. Between the time that the license application is submitted and the commission renders a decision, any such individual, person, or entity may continue to operate. The commission shall render a decision within ninety (90) days of receipt of a completed license application. The license shall be effective upon approval of the commission.

(b) Any other individual, person, or entity shall apply to the commission for a license by submitting a completed "Initial/Renewal License Application to Conduct Advance Deposit Account Wagering." The license shall be effective, and the advance deposit account wagering licensee may begin operations, upon approval of the commission.

(2) Renewal applications. A license to conduct advance deposit account wagering shall be renewed annually in accordance with this administrative regulation. A renewal application shall be submitted on the form "Initial/Renewal License Application to Conduct Advance Deposit Account Wagering" on or before September 1 of the preceding year. The commission shall render a decision on the application on or before December 15 of the preceding year. If approved, a renewal license shall be effective January 1.

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

Section 3. Licensing Costs and Fees. (1) In accordance with KRS 230.260(6), the applicant shall pay all costs incurred by the commission in reviewing an application for an initial license, including legal and investigative costs and the cost of other necessary outside professionals and consultants. As an initial payment for these costs, the applicant shall submit, along with a license application, a cashier's check or certified check payable to the commission in the amount of five thousand dollars ($5,000). Any portion of the payment not required to complete the investigation shall be refunded to the applicant within twenty (20) days of the granting, withdrawal, or rejection of the initial license application. To the extent additional costs will be necessary, the applicant shall submit a cashier's check or certified check payable to the commission in an amount reasonably requested by the commission within ten (10) days of receipt of the request. Failure to submit an additional requested payment shall result in suspension of the processing of the license application and may result in denial of the license.

(2) An applicant for a renewal license shall pay all reasonable costs incurred by the commission in reviewing a renewal license, including legal and investigative costs and the cost of other necessary outside professionals and consultants. The applicant shall submit a cashier's check or certified check payable to the commission in an amount reasonably requested by the commission within ten (10) days of receipt of request. Failure to submit such payment shall result in suspension of the processing of renewing the license and may result in denial of the license.

(3) The commission may waive the costs contained in subsections 1 and 2 of this section in part or completely if the applicant has undergone a certification process or other investigative review by a commission approved industry or regulatory body.

(4) An annual license fee of one thousand dollars ($1,000) shall be payable to the commission upon issuance of the original license and thereafter, if a renewal license is granted, on or before January 1 of each year. A license shall not be issued until receipt of the license fee each year. The commission shall track the additional costs required to implement and enforce this regulation and amend the annual fee if necessary to recoup its regulatory costs, however, in no event shall the annual license fee exceed ten thousand dollars ($10,000), as provided in KRS 230.260(2).

Section 4. License Application Procedures. (1) An application for a license shall be in the form and manner prescribed by the commission. The commission may deny a license to any applicant that provides false or misleading information on or omits material information from the application. The application shall include:

(a) The applicant's legal name;

(b) The location of the applicant's principal office;

(c) The name, address, and date of birth of each principal with a five percent (5%) or greater share of ownership or beneficial interest in the applicant;

(d) Audited financial statements for the last three (3) years or, if the applicant does not have audited financial statements, financial and other pertinent information as required by the commission to determine that the applicant is financially capable of operating as a going concern and protecting accounts;

(e) A detailed plan of how the advance deposit account wagering system will operate. The commission may require changes in the proposed plan of operations as a condition of granting a license. No subsequent material changes in the plan of operations may occur unless ordered by the commission or until approved by the commission after receiving a written request;

(f) A list of all personnel processing wagers on races made by Kentucky residents. This list shall be kept current and be provided to the commission upon request; and

(g) Copies of all documents described and required pursuant to the "Initial/Renewal License Application to Conduct Advance Deposit Account Wagering."

(2) In addition to the application requirements contained in subsection (1) of this section, the commission may require:

(a) A Type II SAS 70 report, or replacement reports as approved from time to time by the Auditing Standards Board of the American Institute of Certified Public Accountants, or other independent report in a form acceptable to the commission, completed within the preceding twelve (12) months and other pertinent information as required by the commission to evaluate the applicant's control objectives, control activities, and control processes. The commission may require that a SAS 70 report, or replacement reports as approved from time to time by the Auditing Standards Board of the American Institute of Certified Public Accountants or other independent report in a form acceptable to the commission, be conducted annually in order to receive a renewal license; and

(b) A bond from a surety company admitted in the Commonwealth of Kentucky or other form of financial security such as an irrevocable letter of credit in favor of the Commonwealth of Kentucky in an amount not to exceed five hundred thousand dollars ($500,000) depending upon the financial stability of the applicant, as demonstrated in the applicant's audited financial statements or, if the applicant does not have audited financial statements, financial and other pertinent information as required by the commission to determine that the applicant is financially capable of operating as a going concern and protecting accounts. The bond or letter of credit shall, if necessary, be used to:

1. Comply with and perform the provisions and undertakings of the advance deposit account wagering licensee set forth in the application as finally approved by the commission;

2. Discharge the licensee's financial obligations to account holders who are Kentucky residents;

3. Discharge payment of all taxes and expenses due by the licensee to the Commonwealth; and

4. Discharge the licensee's financial obligations to any racing association or simulcast facility licensed by the commission.

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

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

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

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

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

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

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

(b) The quality of physical facilities and equipment;

(c) The financial ability of the applicant to conduct advance deposit account wagering;

(d) The protections provided to safeguard accounts, including a certification from the licensee's chief financial officer that account funds will not be comingled with other funds as required in Section 7(6) of this administrative regulation;

(e) The management ability of the applicant and its principals;

(f) Compliance of the applicant with applicable statutes, charters, ordinances, and regulations;

(g) The efforts of the applicant to promote, develop, and improve the horse racing industry in the Commonwealth;

(h) The efforts of the applicant to safeguard and promote the integrity of pari-mutuel wagering in the Commonwealth; and

(i) The economic impact of the applicant upon the Commonwealth.

Section 5. Oral Presentation by Applicant. (1) The commission may require an applicant to make an oral presentation prior to its ruling in order to clarify or otherwise respond to questions concerning the application as a condition to the issuance or renewal of a license.

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

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

Section 6. Additional Information. (1) The commission may request additional information from an applicant if the additional information would assist the commission in deciding whether to issue or renew a license, including:

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

(b) A list of all contracts between the applicant and third parties related to operations. The commission may review such contracts any time upon request.

Section 7. Operations. (1) Before doing business in Kentucky, the licensee must be qualified to do business in Kentucky.

(2) A licensee shall submit a copy of any documents required to be filed with the Kentucky Department of Revenue and any documents related to an audit or investigation by any local, state or federal regulatory agency contemporaneously to the commission.

(3) In addition to the information the commission may request under this or any other applicable regulation or statute, the commission may require the licensee to remit contemporaneously to the commission a copy of any documents required to be filed with any local, state or federal regulatory agency.

(4) A licensee shall submit quarterly reports to the commission providing amounts wagered by Kentucky residents and amounts wagered on Kentucky races as required by KRS 230.260(2).

(5) An applicant shall enter into an agreement with each licensed racing association in the Commonwealth on whose races the applicant offers advance deposit account wagering regarding payment of host fees and any other applicable fees, costs, or payments of any kind to be paid to the licensed association. The licensed racing association and the applicable horsemen's organization shall negotiate a separate agreement for contributions to the purse account generated by advanced deposit account wagering.

(6) An applicant shall not comingle account funds with other funds.

(7) An applicant that does not have audited financial statements for the last three (3) years as referenced in Section 4(1)(d) of this administrative regulation shall provide quarterly financial statements to the commission for the first calendar year of operation.

(8) A licensee must use and communicate pari-mutuel wagers to a totalizator system licensed by the commission.

(9) A licensee must operate and communicate with the totalizator system in such a way as not to provide or facilitate a wagering advantage based on access to information and processing of wagers by account holders relative to persons who wager at licensed associations or simulcast facilities.

(10) All personnel processing wagers made by Kentucky resi-

dents must be licensed in the jurisdiction where they are located. If an individual is located in a jurisdiction that is not a racing jurisdiction or that does not require a license, that individual must be licensed in Kentucky.

(11) Accounts shall only be accepted in the name of an individual and shall not be transferable. Only individuals who have established accounts with a licensee may wager through a licensee.

(12) Each account holder shall provide such personal information as the licensee and the commission require, including, but not limited to:

(a) Name;

(b) Principal residence address;

(c) Telephone number;

(d) Social security number;

(e) Date of birth; and

(f) Other information necessary for account administration.

(13) The information supplied by the account holder shall be verified by the licensee using means acceptable to the commission.

(14) The licensee shall provide each account holder a secure personal identification code and password to be used by the account holder to confirm the validity of every account transaction.

(15) No employee or agent of the licensee shall disclose any confidential information except:

(a) To the commission;

(b) To the account holder as required by this administrative regulation;

(c) To the licensee and its affiliates;

(d) To the licensed association as required by the agreement between the licensee and the association; and

(e) As otherwise required by law.

(16) The licensee shall provide each account holder a copy of account holder rules/terms of agreement and such other information and materials that are pertinent to the operation of the account.

(17) The licensee may refuse to establish an account if it is found that any of the information supplied is false or incomplete or for any other reason the licensee deems sufficient.

(18) Each account shall be administered in accordance with the account holder rules/terms of agreement provided to account holders, including, but not limited to:

(a) Placing of wagers;

(b) Deposits to accounts;

(c) Credits to accounts;

(d) Debits to accounts;

(e) Refunds to accounts;

(f) Withdrawals from accounts;

(g) Minimum deposit requirements;

(h) Fees per wager; and

(i) Rebates.

(19) Each licensee shall have protocols in place and shall publicize to its account holders when its wagers are excluded from a host track's wagering pool. These protocols shall include an immediate electronic mail message to affected account holders and immediate posting on the licensee's website.

(20) A licensee shall maintain complete records of the application and the opening of an account for the life of the account plus two (2) additional years. A licensee shall also maintain complete records of the closing of an account for two (2) years after closing. These records shall be provided to the commission upon request.

(21) A licensee shall maintain complete records of all transactions, including deposits, credits, debits, refunds, withdrawals, fees, wagers, rebates, and earnings for two (2) years. These records shall be provided to the commission upon request.

(22) All wagering conversations, transactions, or other wagering communications, verbal or electronic, shall be recorded by means of the appropriate electronic media, and the tapes or other records of such communications shall be kept by the licensee for a period of two (2) years. These tapes and other records shall be made available to the commission upon request.

(23) The recording of the confirmation of the transaction, as reflected in the voice or other data recording, shall be deemed to be the actual wager regardless of what was recorded by the totalizator system.

(24) A licensee shall not accept wagers if its recording system is not operable.

(25) The commission may monitor the equipment and staff and review the records of a licensee and any of the transactions conducted by the licensee with regards to wagers made by Kentucky residents.

(26) A licensee may suspend or close any account for violation of its account holder rules/terms of agreement, or any other reason it deems sufficient, provided that when an account is closed, it shall return to the account holder all monies then on deposit within seven (7) calendar days.

Section 8. Transfers of Licenses. (1) A license issued under this administrative regulation is neither transferable nor assignable.

(2) A substantial change in ownership in a licensee shall result in termination of the license unless prior written approval has been obtained from the commission. Any request for approval of a substantial change in ownership shall be made on the form "Advance Deposit Account Wagering Change of Control Form," KHRC 145-02, 06/11. Upon receipt of all required information, the commission shall, as soon as practicable, make a determination whether to authorize and approve the substantial change in ownership.

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

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

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

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

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

Section 9. Duration of License. A license issued under this administrative regulation shall be valid for the calendar year for which it is issued.

Section 10. Penalties and Enforcement. (1) The commission shall have all of the rights, powers, and remedies provided for in KRS Chapter 230, KAR Title 810, and KAR Title 811 to ensure compliance with this administrative regulation, including, but not limited to, revocation, suspension, or modification of a license and the imposition of fines.

(2) Additionally, with respect to any individual, person, or entity that offers advanced deposit account wagering to Kentucky residents without a license issued by the commission, the commission may take such measures as it deems necessary, including referral to the appropriate regulatory and law enforcement authorities for civil action or criminal penalties.

Section 11. Severability. In the event that any section or provision of this administrative regulation is found to be invalid, the remaining sections and provisions of this administrative regulation shall not be affected or invalidated.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Initial/Renewal License Application to Conduct Advance Deposit Account Wagering," KHRC 145-01, 06/11; and

(b) "Advance Deposit Account Wagering Change of Control Form," KHRC 145-02, 06/11.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8:00 a.m. to 4:30 p.m.

(3) This material may also be obtained at the commission's

Web site, www.khrc.ky.gov.

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

APPROVED BY AGENCY: June 13, 2011

FILED WITH LRC: June 15, 2011 at noon.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 27, 2011 at 10:00 a.m., at the Kentucky Horse Racing Commission, Kentucky Horse Park, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by July 20, 2011, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 1, 2011. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Susan B. Speckert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the licensing application procedures for entities that offer advance deposit account wagering on horse races to Kentucky residents.

(b) The necessity of this administrative regulation: The regulation is necessary to provide association licensing standards, requirements, and procedures for offering advance deposit account wagering to Kentucky residents.

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

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This is a new regulation that prescribes procedures, fees, requirements, and criteria when granting or denying an application to offer advance deposit account wagering to Kentucky residents.

(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: Entities that offer advance deposit account wagering to Kentucky residents are affected. Racing associations and horsemen are also affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities seeking to offer advance deposit account wagering to Kentucky residents will be required to complete the application form and disclosure requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The applicants will be required to pay an annual licensing fee of $1000. The applicants will also be responsible for paying the cost of any necessary background checks. Depending upon the financial and operational stability of an applicant, a bond of up to $500,000 may have to be posted and a SAS 70 audit may have to be performed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be greater transparency regarding the monies wagered through advance deposit account wagering companies. Race tracks and horsemen will benefit from contribution to purse accounts. The regulation also provides some protections for account holders.

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

(a) Initially: It is unclear at this time if the cost of regulation will exceed the $1000 annual license fee. In the event that the cost does exceed that amount, the commission may seek to amend the annual fee.

(b) On a continuing basis: See above.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: An annual license fee of $1000 is established to cover the regulatory costs. In the event that regulation of these entities proves to be more costly, the commission may seek to amend the annual fee in the future.

(9) TIERING: Is tiering applied? No tiering is applied.

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, 230.310, 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. No estimated change in expenditures or revenues.

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

810 KAR 1:150 Licensing totalizator companies.

RELATES TO: KRS 230.225, 230.260, 230.290, 230.310, 230.320, 230.361, 230.370

STATUTORY AUTHORITY: KRS 230.215, 230.260, 230.310, 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260(3) vests the commission with authority over any totalizator company that provides totalizator services to racing associations and simulcast facilities located in the Commonwealth. KRS 230.260(3) further requires the commission to license any totalizator company under its jurisdiction, regardless of whether the company is located in the Commonwealth, or operates from a location or locations outside of the Commonwealth. This administrative regulation establishes the license application procedures and requirements for totalizator companies that provide totalizator services to racing associations located in the Commonwealth that offer thoroughbred racing.

Section 1. Definitions. (1) "Applicant" means an individual, person, or entity that has submitted an application for a license pursuant to this administrative regulation.

(2) "Individual" means a natural person, at least eighteen years of age, but does not include any corporation, partnership, limited liability company, trust, or estate.

(3) "Nominal change in ownership" is defined in 810 KAR 1:037, 811 KAR 1:037.

(4) "Person" means any corporation, whether organized for profit or not, partnership, limited liability company, trust, estate, association, joint venture, or any other group or combination acting as a unit.

(5) "Principal" is defined in KRS 230.210 when used in the context of a licensed association or an applicant for a license to conduct a horse race meeting; when used in the context of any other type of entity, "Principal" means any of the following individuals associated with a partnership, trust association, limited liability company, or corporation:

(a) The chairman and all members of the board of directors of a corporation;

(b) All partners of a partnership and all participating members of a limited liability company;

(c) All trustees and trust beneficiaries of an association;

(d) The president or chief executive officer and all other officers, managers, and employees who have policy-making or fiduciary responsibility within the organization;

(e) All stockholders or other individuals who own, hold, or control, either directly or indirectly, five percent (5%) or more of stock or financial interest in the collective organization; and

(f) Any other employee, agent, guardian, personal representative, or lender or holder of indebtedness who has the power to exercise a significant influence over the applicant's or licensee's operation.

(6) "Substantial change in ownership" is defined by 810 KAR 1:037, 811 KAR 1:037.

(7) "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 parimutuel wagering information.

(8) "Totalizator company" means any person providing totalizator services or equipment to a racing association, simulcast facility, or advanced deposit wagering entity.

Section 2. License Required. (1) Any totalizator company that provides totalizator services to a racing association or simulcast facility located in or that conducts operations in the Commonwealth shall apply to the commission for a license pursuant to KRS 230.260(3). Deadlines for new license applications shall be as follows:

(a) Any totalizator company that provides totalizator services to a racing association or simulcast facility located in or that conducts operations in the Commonwealth prior to
{EFFECTIVE DATE OF REG}, shall apply to the commission for a license by submitting a completed "Initial/Renewal License Application to Provide Totalizator Services" on or before {60 DAYS AFTER EFFECTIVE DATE}. Between the time that the license application is submitted and the commission renders a decision, any such totalizator company may continue to operate. The license shall be effective upon approval of the commission.

(b) Any other totalizator company shall apply to the commission for a license by submitting a completed "Initial/Renewal License Application to Provide Totalizator Services." The license shall be effective, and the totalizator company may begin operations, upon approval of the commission.

(2) Renewal applications. A license to provide totalizator services shall be renewed annually in accordance with this administrative regulation. A renewal application shall be submitted on the form "Initial/Renewal License Application to Provide Totalizator Services" on or before August 1 of the preceding year. The commission shall render a decision on the application on or before December 20. If approved, a renewal license shall be effective January 1.

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

Section 3. Licensing Costs and Fees. (1) In accordance with KRS 230.260(6), the applicant shall pay all costs incurred by the commission in reviewing an application for an initial license, including legal and investigative costs, including the cost of performing background checks on the applicant's employees, owners and principals, and the cost of other necessary outside professionals and consultants. As an initial payment for these costs, the applicant shall submit, along with a license application, a cashier's check or certified check payable to the commission in the amount of ten thousand dollars ($10,000). Any portion of the payment not required to complete the investigation shall be refunded to the applicant within twenty (20) days of the granting, withdrawal or rejection of the initial license application. To the extent additional costs become necessary, the applicant shall submit a cashier's check or certified check payable to the commission in an amount requested by the commission within ten (10) days of receipt of the request. Failure to submit an additional requested payment shall result in suspension of the processing of the license application and may result in denial of the license.

(2) An applicant for a renewal license shall pay all costs incurred by the commission in reviewing a renewal license, including legal and investigative costs and the cost of other necessary outside professionals and consultants. The applicant shall submit a cashier's check or certified check payable to the commission in an amount requested by the commission within ten (10) days of receipt of request. Failure to submit such payment shall result in suspension of the processing of renewing the license and may result in denial of the license.

(3) The commission may waive the requirements of subsections (1) and (2) of this section, in part or completely, if the applicant has undergone a certification process or other investigative review by a commission-approved industry or regulatory body.

(4) An annual license fee one thousand dollars ($1,000) shall be payable to the commission upon issuance of the original license and thereafter, if a renewal license is granted, on or before January 1 of each year. A license shall not be issued until receipt of the license fee each year.

Section 4. License Application Procedures. (1) An application for a license shall be in the form and manner prescribed by the commission. The commission may deny a license to any applicant that provides false or misleading information on or omits material information from the application. The application shall include:

(a) The applicant's legal name;

(b) The location of the applicant's principal office;

(c) The name, address, and date of birth of each principal with a five percent (5%) or greater share of ownership or beneficial interest in the applicant;

(d) Audited financial statements for the last three years or, if the applicant does not have audited financial statements, financial and other pertinent information as required by the commission to determine that the applicant is financially capable of operating as a going concern;

(e) A Standards for Attestation Engagements (SSAE) No. 16 report, or other independent report in a form acceptable to the commission, completed within the preceding 12 months, to assure adequate financial controls are in place and compliance with totalizator standards. The commission may require that a SSAE 16 audit, or other independent report in a form acceptable to the commission, be conducted annually in order to receive a renewal license;

(f) A list of personnel assigned to work in Kentucky, which shall be kept current and be provided to the commission upon request;

(g) A certification of compliance with the Kentucky Horse Racing Commission Totalizator Standards;

(h) An agreement to testing of hardware and software as may be directed by the commission**;** and

(i) Copies of all documents described and required pursuant to the "Initial/Renewal License Application to Provide Totalizator Services."

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

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

1. Been convicted of any crime of moral turpitude, embezzlement, or larceny, or any violation of any law pertaining to illegal gaming or gambling, or any crime that is inimical to the declared policy of the Commonwealth of Kentucky with regard to horse racing and pari-mutuel wagering thereon;

2. Been convicted in any jurisdiction within ten (10) years preceding initial licensing or license renewal of any crime that is or would be a felony or class A misdemeanor in the Commonwealth of Kentucky;

3. Been identified in the published reports of any federal or state legislative or executive body, or in an opinion of any judicial body, as being a member or associate of organized crime, or of being of notorious or unsavory reputation;

4. Been charged by any federal, state, or local law enforcement authority with a violation of any federal, state, or local law;

5. Had a gaming or totalizator company license revoked in another jurisdiction on grounds that would have been grounds for revoking the license in Kentucky; or

6. Engaged in any other activities that would pose a threat to the public interest or to the effective regulation of horse racing and wagering in Kentucky, or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of racing and wagering or in the operation of the business and financial arrangements incidental thereto; or

7. Been a party to litigation over business practices or disciplinary actions over a business license;

8. Been a party to proceedings in which unfair labor practices, discrimination, or violation of government regulations pertaining to racing or gaming laws was an issue, or bankruptcy proceedings;

9. Failed to satisfy judgments, orders, or decrees; and

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

(b) The quality of physical facilities and equipment;

(c) The management ability of the applicant and its principals;

(d) Compliance of the applicant with applicable statutes, charters, ordinances, and regulations;

(e) The efforts of the applicant to safeguard and promote the integrity of pari-mutuel wagering in the Commonwealth;

Section 5. Oral Presentation by Applicant. (1) Prior to making its ruling, the commission may require an applicant to make an oral presentation concerning its application in order to clarify or otherwise respond to questions concerning the application. The presentation shall be limited to the information contained in the applicant's application and any supplemental information relevant to the commission's determination of the applicant's suitability. The admission as evidence of the supplemental information shall be subject to the discretion of the commission.

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

Section 6. Additional Information. (1) The commission may request additional information from an applicant if the additional information would assist the commission in deciding whether to issue or renew a license, including copies of any documents used by the applicant in preparing the application and contracts between the applicant and third parties related to operations.

Section 7. Operations. (1) Before doing business in Kentucky, the licensee must be qualified to do business in Kentucky.

(2) In addition to the information the commission may request under this or any other applicable regulation or statute, the commission may require the licensee to remit contemporaneously to the commission a copy of any documents required to be filed with the Department of Revenue or other regulatory agency.

(3) The licensee shall operate in conformity with the Kentucky Horse Racing Commission Totalizator Standards.

Section 8. Transfers of Licenses. (1) A license issued under this administrative regulation is neither transferable nor assignable.

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

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

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

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

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

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

Section 9. Duration of License. A license issued under this administrative regulation shall be valid for the calendar year for which it is issued.

Section 10. Penalties and Enforcement. (1) The commission shall have all of the rights, powers, and remedies provided for in KRS Chapter 230, KAR Title 810, and KAR Title 811 to ensure compliance with this administrative regulation, including, but not limited to, revocation, suspension, or modification of a license and the imposition of fines.

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

(a) "Initial/Renewal License Application to Provide Totalizator Services" KHRC 150-01, 6/11;

(b) "Totalizator Change of Control Form," KHRC 150-02, 6/11;

(c) "Kentucky Horse Racing Commission Totalizator Standards," KHRC 150-03, 6/11

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington,

Kentucky 40511, Monday through Friday, 8:00 a.m. to 4:30 p.m.

(3) This material may also be obtained at the commission's Web site, www.khrc.ky.gov.

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

APPROVED BY AGENCY: June 13, 2011

FILED WITH LRC: June15, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 27, 2011 at 1:00 p.m., at the offices of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by July 20, 2011, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 1, 2011. 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 administrative regulation requires totalizator companies that provide totalizator services to racing associations located in the Commonwealth to be licensed. It establishes application and licensing fees and sets forth the requirements for obtaining a license.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to fulfill the statutory mandate in KRS 230.260(3) which requires totalizator companies under the jurisdiction of the commission to be licensed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.260 vests the commission with jurisdiction over any totalizator company that provides totalizator services to a racing association located in the Commonwealth and requires and such totalizator company to be licensed by the commission. It further allows the commission to impose application and license fees on the totalizator companies and requires it to promulgate administrative regulations which establish conditions and procedures for the licensing of totalizator companies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes application and licensing fees, as well as the conditions and procedures for the licensing of totalizator companies.

(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: There are three major totalizator companies that could be affected by this administrative regulation. At the present time, only one of those companies is doing business in Kentucky. If the other two – or any new totalizator company – moves into the Commonwealth, they will have to comply with the regulation as well. (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities identified in question (3) will have to pay the application fee to apply for a license and the licensing fee to receive a license. They will have to provide the documentation required by the license application.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The totalizator companies will have to pay an application fee of $10,000 to apply for a license. Any portion of this money not expended during the review of the license will be refunded. If the cost of reviewing of the license application exceeds $10,000, the totalizator company will be assessed those additional costs. If the company is granted a license, it will be assessed a $1,000 license fee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The companies will have the right to conduct business within the Commonwealth.

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

(a) Initially: It will cost the commission roughly $10,000 to review and perform due diligence in connection with each application and will costs roughly $1,000 per year to regulate each totalizator company.

(b) On a continuing basis: It will cost the commission roughly $10,000 to review and perform due diligence in connection with each application and will cost roughly $1,000 per year to regulate each totalizator company.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The implementation of this administrative regulation requires the imposition of application and license fees.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation establishes a $10,000 application fee and a $1,000 license fee.

(9) TIERING: Is tiering applied? Tiering is not applied and this regulation will be applied equally to all parties.

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 230.260

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No estimated change in expenditures or revenues as the cost of implementing this regulation will be offset by the application and license fees it imposes.

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

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

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

year? No cost.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

811 KAR 1:285. Advance deposit account wagering.

RELATES TO: KRS 230.260, 230.290, 230.310, 230.320

STATUTORY AUTHORITY: KRS 230.215, 230.260, 230.310, 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260(2) authorizes the Kentucky Horse Racing Commission to issue licenses to any person or entity that offers advance deposit account wagering to Kentucky residents. This administrative regulation establishes the license application procedures and requirements to offer advance deposit account wagering to Kentucky residents.

Section 1. Definitions. (1) "Account" means an account for advance deposit account wagering with a specific identifiable record of deposits, wagers, and withdrawals established by an account holder and managed by the advance deposit account wagering licensee.

(2) "Account holder" means an individual who successfully completed an application and for whom the advance deposit account wagering licensee has opened an account.

(3) "Advance deposit account wagering" is defined by KRS 230.210(1).

(4) "Advance deposit account wagering licensee" is defined by KRS 230.210(2).

(5) "Applicant" means an individual, person, or entity that has submitted an application for a license pursuant to this administrative regulation.

(6) "Association" is defined by KRS 230.210(5).

(7) "Confidential information" means:

(a) The amount of money credited to, debited from, withdrawn from, or present in any particular account holder's account;

(b) The amount of money wagered by a particular account holder on any race or series of races;

(c) The account number and secure personal identification code of a particular account holder;

(d) The identities of particular racing associations on which the account holder is wagering or has wagered; and

(e) Unless otherwise authorized by the account holder, the name, address, and other information in the possession of the advance deposit account wagering licensee that would identify the account holder to anyone other than the commission or the advance deposit account wagering licensee.

(8) "Individual" means a natural person, at least eighteen (18) years of age, but does not include any corporation, partnership, limited liability company, trust, or estate.

(9) "Kentucky resident" is defined by KRS 230.210(12).

(10) "Nominal change in ownership" is defined by 811 KAR 1:037 Section 1(1).

(11) "Person" means any corporation, whether organized for profit or not, partnership, limited liability company, trust, estate, association, joint venture, or any other group or combination acting as a unit.

(12) "Principal" means any of the following individuals associated with a partnership, trust association, limited liability company, or corporation:

(a) The chairman and all members of the board of directors of a corporation;

(b) All partners of a partnership and all participating members of a limited liability company;

(c) All trustees and trust beneficiaries of an association;

(d) The president or chief executive officer and all other officers, managers, and employees who have policy-making or fiduciary responsibility within the organization;

(e) All stockholders or other individuals who own, hold, or control, either directly or indirectly, five percent (5%) or more of stock or financial interest in the collective organization; and

(f) Any other employee, agent, guardian, personal representative, or lender or holder of indebtedness who has the power to exercise a significant influence over the applicant's or licensee's operation.

(13) "Substantial change in ownership" is defined by 811 KAR 1:037, Section 1(4).

(14) "Telephone account wagering" is defined by KRS 230.210(19).

(15) "Totalizator" or "Totalizator system" 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.

Section 2. License Required to Conduct Advance Deposit Account Wagering. (1) New license applications. Any individual, person, or entity, other than a licensed association engaged in telephone account wagering as defined in KRS 230.210(19) and addressed in KRS 230.378 and KRS 230.379, that offers advance deposit account wagering to Kentucky residents shall apply to the commission for a license pursuant to KRS 230.260(2). Deadlines for new license applications shall be as follows:

(a) Any individual, person, or entity that offered advanced deposit account wagering to Kentucky residents prior to {EFFECTIVE DATE OF REG}, shall apply to the commission for a license by submitting a completed "Initial/Renewal License Application to Conduct Advance Deposit Account Wagering" on or before {60 DAYS AFTER EFFECTIVE DATE}. Between the time that the license application is submitted and the commission renders a decision, any such individual, person, or entity may continue to operate. The commission shall render a decision within ninety (90) days of receipt of a completed license application. The license shall be effective upon approval of the commission.

(b) Any other individual, person, or entity shall apply to the commission for a license by submitting a completed "Initial/Renewal License Application to Conduct Advance Deposit Account Wagering." The license shall be effective, and the advance deposit account wagering licensee may begin operations, upon approval of the commission.

(2) Renewal applications. A license to conduct advance deposit account wagering shall be renewed annually in accordance with this administrative regulation. A renewal application shall be submitted on the form "Initial/Renewal License Application to Conduct Advance Deposit Account Wagering" on or before September 1 of the preceding year. The commission shall render a decision on the application on or before December 15 of the preceding year. If approved, a renewal license shall be effective January 1.

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

Section 3. Licensing Costs and Fees. (1) In accordance with KRS 230.260(6), the applicant shall pay all costs incurred by the commission in reviewing an application for an initial license, including legal and investigative costs and the cost of other necessary outside professionals and consultants. As an initial payment for these costs, the applicant shall submit, along with a license application, a cashier's check or certified check payable to the commission in the amount of five thousand dollars ($5,000). Any portion of the payment not required to complete the investigation shall be refunded to the applicant within twenty (20) days of the granting, withdrawal, or rejection of the initial license application. To the extent additional costs will be necessary, the applicant shall submit

a cashier's check or certified check payable to the commission in an amount reasonably requested by the commission within ten (10) days of receipt of the request. Failure to submit an additional requested payment shall result in suspension of the processing of the license application and may result in denial of the license.

(2) An applicant for a renewal license shall pay all reasonable costs incurred by the commission in reviewing a renewal license, including legal and investigative costs and the cost of other necessary outside professionals and consultants. The applicant shall submit a cashier's check or certified check payable to the commission in an amount reasonably requested by the commission within ten (10) days of receipt of request. Failure to submit such payment shall result in suspension of the processing of renewing the license and may result in denial of the license.

(3) The commission may waive the costs contained in subsections 1 and 2 of this section in part or completely if the applicant has undergone a certification process or other investigative review by a commission approved industry or regulatory body.

(4) An annual license fee of one thousand dollars ($1,000) shall be payable to the commission upon issuance of the original license and thereafter, if a renewal license is granted, on or before January 1 of each year. A license shall not be issued until receipt of the license fee each year. The commission shall track the additional costs required to implement and enforce this regulation and amend the annual fee if necessary to recoup its regulatory costs, however, in no event shall the annual license fee exceed ten thousand dollars ($10,000), as provided in KRS 230.260(2).

Section 4. License Application Procedures. (1) An application for a license shall be in the form and manner prescribed by the commission. The commission may deny a license to any applicant that provides false or misleading information on or omits material information from the application. The application shall include:

(a) The applicant's legal name;

(b) The location of the applicant's principal office;

(c) The name, address, and date of birth of each principal with a five percent (5%) or greater share of ownership or beneficial interest in the applicant;

(d) Audited financial statements for the last three (3) years or, if the applicant does not have audited financial statements, financial and other pertinent information as required by the commission to determine that the applicant is financially capable of operating as a going concern and protecting accounts;

(e) A detailed plan of how the advance deposit account wagering system will operate. The commission may require changes in the proposed plan of operations as a condition of granting a license. No subsequent material changes in the plan of operations may occur unless ordered by the commission or until approved by the commission after receiving a written request;

(f) A list of all personnel processing wagers on races made by Kentucky residents. This list shall be kept current and be provided to the commission upon request; and

(g) Copies of all documents described and required pursuant to the "Initial/Renewal License Application to Conduct Advance Deposit Account Wagering."

(2) In addition to the application requirements contained in subsection (1) of this section, the commission may require:

(a) A Type II SAS 70 report, or replacement reports as approved from time to time by the Auditing Standards Board of the American Institute of Certified Public Accountants, or other independent report in a form acceptable to the commission, completed within the preceding twelve (12) months and other pertinent information as required by the commission to evaluate the applicant's control objectives, control activities, and control processes. The commission may require that a SAS 70 report, or replacement reports as approved from time to time by the Auditing Standards Board of the American Institute of Certified Public Accountants or other independent report in a form acceptable to the commission, be conducted annually in order to receive a renewal license; and

(b) A bond from a surety company admitted in the Commonwealth of Kentucky or other form of financial security such as an irrevocable letter of credit in favor of the Commonwealth of Kentucky in an amount not to exceed five hundred thousand dollars ($500,000) depending upon the financial stability of the applicant, as demonstrated in the applicant's audited financial statements or, if the applicant does not have audited financial statements, financial and other pertinent information as required by the commission to determine that the applicant is financially capable of operating as a going concern and protecting accounts. The bond or letter of credit shall, if necessary, be used to:

1. Comply with and perform the provisions and undertakings of the advance deposit account wagering licensee set forth in the application as finally approved by the commission;

2. Discharge the licensee's financial obligations to account holders who are Kentucky residents;

3. Discharge payment of all taxes and expenses due by the licensee to the Commonwealth; and

4. Discharge the licensee's financial obligations to any racing association or simulcast facility licensed by the commission.

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

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

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

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

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

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

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

(b) The quality of physical facilities and equipment;

(c) The financial ability of the applicant to conduct advance deposit account wagering;

(d) The protections provided to safeguard accounts, including a certification from the licensee's chief financial officer that account funds will not be comingled with other funds as required in Section 7(6) of this administrative regulation;

(e) The management ability of the applicant and its principals;

(f) Compliance of the applicant with applicable statutes, charters, ordinances, and regulations;

(g) The efforts of the applicant to promote, develop, and improve the horse racing industry in the Commonwealth;

(h) The efforts of the applicant to safeguard and promote the integrity of pari-mutuel wagering in the Commonwealth; and

(i) The economic impact of the applicant upon the Commonwealth.

Section 5. Oral Presentation by Applicant. (1) The commission may require an applicant to make an oral presentation prior to its ruling in order to clarify or otherwise respond to questions concerning the application as a condition to the issuance or renewal of a license.

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

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

Section 6. Additional Information. (1) The commission may request additional information from an applicant if the additional information would assist the commission in deciding whether to issue or renew a license, including:

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

(b) A list of all contracts between the applicant and third parties related to operations. The commission may review such contracts any time upon request.

Section 7. Operations. (1) Before doing business in Kentucky, the licensee must be qualified to do business in Kentucky.

(2) A licensee shall submit a copy of any documents required to be filed with the Kentucky Department of Revenue and any documents related to an audit or investigation by any local, state or federal regulatory agency contemporaneously to the commission.

(3) In addition to the information the commission may request under this or any other applicable regulation or statute, the commission may require the licensee to remit contemporaneously to the commission a copy of any documents required to be filed with any local, state or federal regulatory agency.

(4) A licensee shall submit quarterly reports to the commission providing amounts wagered by Kentucky residents and amounts wagered on Kentucky races as required by KRS 230.260(2).

(5) An applicant shall enter into an agreement with each licensed racing association in the Commonwealth on whose races the applicant offers advance deposit account wagering regarding payment of host fees and any other applicable fees, costs, or payments of any kind to be paid to the licensed association. The licensed racing association and the applicable horsemen's organization shall negotiate a separate agreement for contributions to the purse account generated by advanced deposit account wagering.

(6) An applicant shall not comingle account funds with other funds.

(7) An applicant that does not have audited financial statements for the last three (3) years as referenced in Section 4(1)(d) of this administrative regulation shall provide quarterly financial statements to the commission for the first calendar year of operation.

(8) A licensee must use and communicate pari-mutuel wagers to a totalizator system licensed by the commission.

(9) A licensee must operate and communicate with the totalizator system in such a way as not to provide or facilitate a wagering advantage based on access to information and processing of wagers by account holders relative to persons who wager at licensed associations or simulcast facilities.

(10) All personnel processing wagers made by Kentucky residents must be licensed in the jurisdiction where they are located. If an individual is located in a jurisdiction that is not a racing jurisdiction or that does not require a license, that individual must be licensed in Kentucky.

(11) Accounts shall only be accepted in the name of an individual and shall not be transferable. Only individuals who have established accounts with a licensee may wager through a licensee.

(12) Each account holder shall provide such personal information as the licensee and the commission require, including, but not limited to:

(a) Name;

(b) Principal residence address;

(c) Telephone number;

(d) Social Security number;

(e) Date of birth; and

(f) Other information necessary for account administration.

(13) The information supplied by the account holder shall be verified by the licensee using means acceptable to the commission.

(14) The licensee shall provide each account holder a secure personal identification code and password to be used by the account holder to confirm the validity of every account transaction.

(15) No employee or agent of the licensee shall disclose any confidential information except:

(a) To the commission;

(b) To the account holder as required by this administrative regulation;

(c) To the licensee and its affiliates;

(d) To the licensed association as required by the agreement between the licensee and the association; and

(e) As otherwise required by law.

(16) The licensee shall provide each account holder a copy of account holder rules/terms of agreement and such other information and materials that are pertinent to the operation of the account.

(17) The licensee may refuse to establish an account if it is found that any of the information supplied is false or incomplete or for any other reason the licensee deems sufficient.

(18) Each account shall be administered in accordance with the account holder rules/terms of agreement provided to account holders, including, but not limited to:

(a) Placing of wagers;

(b) Deposits to accounts;

(c) Credits to accounts;

(d) Debits to accounts;

(e) Refunds to accounts;

(f) Withdrawals from accounts;

(g) Minimum deposit requirements;

(h) Fees per wager; and

(i) Rebates.

(19) Each licensee shall have protocols in place and shall publicize to its account holders when its wagers are excluded from a host track's wagering pool. These protocols shall include an immediate electronic mail message to affected account holders and immediate posting on the licensee's website.

(20) A licensee shall maintain complete records of the application and the opening of an account for the life of the account plus two (2) additional years. A licensee shall also maintain complete records of the closing of an account for two (2) years after closing. These records shall be provided to the commission upon request.

(21) A licensee shall maintain complete records of all transactions, including deposits, credits, debits, refunds, withdrawals, fees, wagers, rebates, and earnings for two (2) years. These records shall be provided to the commission upon request.

(22) All wagering conversations, transactions, or other wagering communications, verbal or electronic, shall be recorded by means of the appropriate electronic media, and the tapes or other records of such communications shall be kept by the licensee for a period of two (2) years. These tapes and other records shall be made available to the commission upon request.

(23) The recording of the confirmation of the transaction, as reflected in the voice or other data recording, shall be deemed to be the actual wager regardless of what was recorded by the totalizator system.

(24) A licensee shall not accept wagers if its recording system is not operable.

(25) The commission may monitor the equipment and staff and review the records of a licensee and any of the transactions conducted by the licensee with regards to wagers made by Kentucky residents.

(26) A licensee may suspend or close any account for violation of its account holder rules/terms of agreement, or any other reason it deems sufficient, provided that when an account is closed, it shall return to the account holder all monies then on deposit within seven (7) calendar days.

Section 8. Transfers of Licenses. (1) A license issued under this administrative regulation is neither transferable nor assignable.

(2) A substantial change in ownership in a licensee shall result in termination of the license unless prior written approval has been obtained from the commission. Any request for approval of a substantial change in ownership shall be made on the form "Advance Deposit Account Wagering Change of Control Form," KHRC 145-02, 06/11. Upon receipt of all required information, the commission shall, as soon as practicable, make a determination whether to authorize and approve the substantial change in ownership.

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

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

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

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

(c) A debt transaction of a publicly traded corporation, unless such transaction results in the pledge or encumbrance of the as-

sets or any portion thereof of the association.

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

Section 9. Duration of License. A license issued under this administrative regulation shall be valid for the calendar year for which it is issued.

Section 10. Penalties and Enforcement. (1) The commission shall have all of the rights, powers, and remedies provided for in KRS Chapter 230, KAR Title 810, and KAR Title 811 to ensure compliance with this administrative regulation, including, but not limited to, revocation, suspension, or modification of a license and the imposition of fines.

(2) Additionally, with respect to any individual, person, or entity that offers advanced deposit account wagering to Kentucky residents without a license issued by the commission, the commission may take such measures as it deems necessary, including referral to the appropriate regulatory and law enforcement authorities for civil action or criminal penalties.

Section 11. Severability. In the event that any section or provision of this administrative regulation is found to be invalid, the remaining sections and provisions of this administrative regulation shall not be affected or invalidated.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Initial/Renewal License Application to Conduct Advance Deposit Account Wagering," KHRC 145-01, 06/11; and

(b) "Advance Deposit Account Wagering Change of Control Form," KHRC 145-02, 06/11.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8:00 a.m. to 4:30 p.m.

(3) This material may also be obtained at the commission's Web site, www.khrc.ky.gov.

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

APPROVED BY AGENCY: June 13, 2011

FILED WITH LRC: June 15, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 27, 2011 at 10:00 a.m., at the Kentucky Horse Racing Commission, Kentucky Horse Park, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by July 20, 2011, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 1, 2011. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Susan B. Speckert, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the licensing application procedures for entities that offer advance deposit account wagering on horse races to Kentucky residents.

(b) The necessity of this administrative regulation: The regulation is necessary to provide association licensing standards, requirements, and procedures for offering advance deposit account wagering to Kentucky residents.

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

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This is a new regulation that prescribes procedures, fees, requirements, and criteria when granting or denying an application to offer advance deposit account wagering to Kentucky residents.

(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: Entities that offer advance deposit account wagering to Kentucky residents are affected. Racing associations and horsemen are also affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities seeking to offer advance deposit account wagering to Kentucky residents will be required to complete the application form and disclosure requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The applicants will be required to pay an annual licensing fee of $1000. The applicants will also be responsible for paying the cost of any necessary background checks. Depending upon the financial and operational stability of an applicant, a bond of up to $500,000 may have to be posted and a SAS 70 audit may have to be performed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be greater transparency regarding the monies wagered through advance deposit account wagering companies. Race tracks and horsemen will benefit from contribution to purse accounts. The regulation also provides some protections for account holders.

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

(a) Initially: It is unclear at this time if the cost of regulation will exceed the $1000 annual license fee. In the event that the cost does exceed that amount, the commission may seek to amend the annual fee.

(b) On a continuing basis: See above.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: An annual license fee of $1000 is established to cover the regulatory costs. In the event that regulation of these entities proves to be more costly, the commission may seek to amend the annual fee in the future.

(9) TIERING: Is tiering applied? No tiering is applied.

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, 230.310, 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. No estimated change in expenditures or revenues.

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

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

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

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

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

Revenues (+/-)

Expenditures (+/-):

Other Explanation:

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

811 KAR 1:290 Licensing totalizator companies.

RELATES TO: KRS 230.225, 230.260, 230.290, 230.310, 230.320, 230.361, 230.370

STATUTORY AUTHORITY: KRS 230.215, 230.260, 230.310, 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260(3) vests the commission with authority over any totalizator company that provides totalizator services to racing associations and simulcast facilities located in the Commonwealth. KRS 230.260(3) further requires the commission to license any totalizator company under its jurisdiction, regardless of whether the company is located in the Commonwealth, or operates from a location or locations outside of the Commonwealth. This administrative regulation establishes the license application procedures and requirements for totalizator companies that provide totalizator services to racing associations located in the Commonwealth that offer standardbred racing.

Section 1. Definitions. (1) "Applicant" means an individual, person, or entity that has submitted an application for a license pursuant to this administrative regulation.

(2) "Individual" means a natural person, at least eighteen years of age, but does not include any corporation, partnership, limited liability company, trust, or estate.

(3) "Nominal change in ownership" is defined in 810 KAR 1:037, 811 KAR 1:037.

(4) "Person" means any corporation, whether organized for profit or not, partnership, limited liability company, trust, estate, association, joint venture, or any other group or combination acting as a unit.

(5) "Principal" is defined in KRS 230.210 when used in the context of a licensed association or an applicant for a license to conduct a horse race meeting; when used in the context of any other type of entity, "Principal" means any of the following individuals associated with a partnership, trust association, limited liability company, or corporation:

(a) The chairman and all members of the board of directors of a corporation;

(b) All partners of a partnership and all participating members of a limited liability company;

(c) All trustees and trust beneficiaries of an association;

(d) The president or chief executive officer and all other officers, managers, and employees who have policy-making or fiduciary responsibility within the organization;

(e) All stockholders or other individuals who own, hold, or control, either directly or indirectly, five percent (5%) or more of stock or financial interest in the collective organization; and

(f) Any other employee, agent, guardian, personal representative, or lender or holder of indebtedness who has the power to exercise a significant influence over the applicant's or licensee's operation.

(6) "Substantial change in ownership" is defined by 810 KAR 1:037, 811 KAR 1:037.

(7) "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.

(8) "Totalizator company" means any person providing totalizator services or equipment to a racing association, simulcast facility, or advanced deposit wagering entity.

Section 2. License Required. (1) Any totalizator company that provides totalizator services to a racing association or simulcast facility located in or that conducts operations in the Commonwealth shall apply to the commission for a license pursuant to KRS 230.260(3). Deadlines for new license applications shall be as follows:

(a) Any totalizator company that provides totalizator services to a racing association or simulcast facility located in or that conducts operations in the Commonwealth prior to {EFFECTIVE DATE OF REG}, shall apply to the commission for a license by submitting a completed "Initial/Renewal License Application to Provide Totalizator Services" on or before {60 DAYS AFTER EFFECTIVE DATE}. Between the time that the license application is submitted and the commission renders a decision, any such totalizator company may continue to operate. The license shall be effective upon approval of the commission.

(b) Any other totalizator company shall apply to the commission for a license by submitting a completed "Initial/Renewal License Application to Provide Totalizator Services." The license shall be effective, and the totalizator company may begin operations, upon approval of the commission.

(2) Renewal applications. A license to provide totalizator services shall be renewed annually in accordance with this administrative regulation. A renewal application shall be submitted on the form "Initial/Renewal License Application to Provide Totalizator Services" on or before August 1 of the preceding year. The commission shall render a decision on the application on or before December 20. If approved, a renewal license shall be effective January 1.

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

Section 3. Licensing Costs and Fees. (1) In accordance with KRS 230.260(6), the applicant shall pay all costs incurred by the commission in reviewing an application for an initial license, including legal and investigative costs, including the cost of performing background checks on the applicant's employees, owners and principals, and the cost of other necessary outside professionals and consultants. As an initial payment for these costs, the applicant shall submit, along with a license application, a cashier's

check or certified check payable to the commission in the amount of ten thousand dollars ($10,000). Any portion of the payment not required to complete the investigation shall be refunded to the applicant within twenty (20) days of the granting, withdrawal or rejection of the initial license application. To the extent additional costs become necessary, the applicant shall submit a cashier's check or certified check payable to the commission in an amount requested by the commission within ten (10) days of receipt of the request. Failure to submit an additional requested payment shall result in suspension of the processing of the license application and may result in denial of the license.

(2) An applicant for a renewal license shall pay all costs incurred by the commission in reviewing a renewal license, including legal and investigative costs and the cost of other necessary outside professionals and consultants. The applicant shall submit a cashier's check or certified check payable to the commission in an amount requested by the commission within ten (10) days of receipt of request. Failure to submit such payment shall result in suspension of the processing of renewing the license and may result in denial of the license.

(3) The commission may waive the requirements of subsections (1) and (2) of this section, in part or completely, if the applicant has undergone a certification process or other investigative review by a commission-approved industry or regulatory body.

(4) An annual license fee one thousand dollars ($1,000) shall be payable to the commission upon issuance of the original license and thereafter, if a renewal license is granted, on or before January 1 of each year. A license shall not be issued until receipt of the license fee each year.

Section 4. License Application Procedures. (1) An application for a license shall be in the form and manner prescribed by the commission. The commission may deny a license to any applicant that provides false or misleading information on or omits material information from the application. The application shall include:

(a) The applicant's legal name;

(b) The location of the applicant's principal office;

(c) The name, address, and date of birth of each principal with a five percent (5%) or greater share of ownership or beneficial interest in the applicant;

(d) Audited financial statements for the last three years or, if the applicant does not have audited financial statements, financial and other pertinent information as required by the commission to determine that the applicant is financially capable of operating as a going concern;

(e) A Standards for Attestation Engagements (SSAE) No. 16 report, or other independent report in a form acceptable to the commission, completed within the preceding 12 months, to assure adequate financial controls are in place and compliance with totalizator standards. The commission may require that a SSAE 16 audit, or other independent report in a form acceptable to the commission, be conducted annually in order to receive a renewal license;

(f) A list of personnel assigned to work in Kentucky, which shall be kept current and be provided to the commission upon request;

(g) A certification of compliance with the Kentucky Horse Racing Commission Totalizator Standards;

(h) An agreement to testing of hardware and software as may be directed by the commission; and

(i) Copies of all documents described and required pursuant to the "Initial/Renewal License Application to Provide Totalizator Services."

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

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

1. Been convicted of any crime of moral turpitude, embezzlement, or larceny, or any violation of any law pertaining to illegal gaming or gambling, or any crime that is inimical to the declared policy of the Commonwealth of Kentucky with regard to horse racing and pari-mutuel wagering thereon;

2. Been convicted in any jurisdiction within ten (10) years preceding initial licensing or license renewal of any crime that is or would be a felony or class A misdemeanor in the Commonwealth of Kentucky;

3. Been identified in the published reports of any federal or state legislative or executive body, or in an opinion of any judicial body, as being a member or associate of organized crime, or of being of notorious or unsavory reputation;

4. Been charged by any federal, state, or local law enforcement authority with a violation of any federal, state, or local law;

5. Had a gaming or totalizator company license revoked in another jurisdiction on grounds that would have been grounds for revoking the license in Kentucky; or

6. Engaged in any other activities that would pose a threat to the public interest or to the effective regulation of horse racing and wagering in Kentucky, or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of racing and wagering or in the operation of the business and financial arrangements incidental thereto; or

7. Been a party to litigation over business practices or disciplinary actions over a business license;

8. Been a party to proceedings in which unfair labor practices, discrimination, or violation of government regulations pertaining to racing or gaming laws was an issue, or bankruptcy proceedings;

9. Failed to satisfy judgments, orders, or decrees; and

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

(b) The quality of physical facilities and equipment;

(c) The management ability of the applicant and its principals;

(d) Compliance of the applicant with applicable statutes, charters, ordinances, and regulations;

(e) The efforts of the applicant to safeguard and promote the integrity of pari-mutuel wagering in the Commonwealth;

Section 5. Oral Presentation by Applicant. (1) Prior to making its ruling, the commission may require an applicant to make an oral presentation concerning its application in order to clarify or otherwise respond to questions concerning the application. The presentation shall be limited to the information contained in the applicant's application and any supplemental information relevant to the commission's determination of the applicant's suitability. The admission as evidence of the supplemental information shall be subject to the discretion of the commission.

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

Section 6. Additional Information. (1) The commission may request additional information from an applicant if the additional information would assist the commission in deciding whether to issue or renew a license, including copies of any documents used by the applicant in preparing the application and contracts between the applicant and third parties related to operations.

Section 7. Operations. (1) Before doing business in Kentucky, the licensee must be qualified to do business in Kentucky.

(2) In addition to the information the commission may request under this or any other applicable regulation or statute, the commission may require the licensee to remit contemporaneously to the commission a copy of any documents required to be filed with the Department of Revenue or other regulatory agency.

(3) The licensee shall operate in conformity with the Kentucky Horse Racing Commission Totalizator Standards.

Section 8. Transfers of Licenses. (1) A license issued under this administrative regulation is neither transferable nor assignable.

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

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

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

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

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

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

Section 9. Duration of License. A license issued under this administrative regulation shall be valid for the calendar year for which it is issued.

Section 10. Penalties and Enforcement. (1) The commission shall have all of the rights, powers, and remedies provided for in KRS Chapter 230, KAR Title 810, and KAR Title 811 to ensure compliance with this administrative regulation, including, but not limited to, revocation, suspension, or modification of a license and the imposition of fines.

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

(a) "Initial/Renewal License Application to Provide Totalizator Services" KHRC 150-01, 6/11;

(b) "Totalizator Change of Control Form," KHRC 150-02, 6/11;

(c) "Kentucky Horse Racing Commission Totalizator Standards," KHRC 150-03, 6/11

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8:00 a.m. to 4:30 p.m.

(3) This material may also be obtained at the commission's Web site, www.khrc.ky.gov.

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

APPROVED BY AGENCY: June 13, 2011

FILED WITH LRC: June 15, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 27, 2011 at 1:00 p.m., at the offices of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by July 20, 2011, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 1, 2011. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Timothy A. West, Assistant General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation requires totalizator companies that provide totalizator services to racing associations located in the Commonwealth to be licensed. It establishes application and licensing fees and sets forth the requirements for obtaining a license.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to fulfill the statutory mandate in KRS 230.260(3) which requires totalizator companies under the jurisdiction of the commission to be licensed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.260 vests the commission with jurisdiction over any totalizator company that provides totalizator services to a racing association located in the Commonwealth and requires and such totalizator company to be licensed by the commission. It further allows the commission to impose application and license fees on the totalizator companies and requires it to promulgate administrative regulations which establish conditions and procedures for the licensing of totalizator companies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes application and licensing fees, as well as the conditions and procedures for the licensing of totalizator companies.

(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: There are three major totalizator companies that could be affected by this administrative regulation. At the present time, only one of those companies is doing business in Kentucky. If the other two – or any new totalizator company – moves into the Commonwealth, they will have to comply with the regulation as well.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities identified in question (3) will have to pay the application fee to apply for a license and the licensing fee to receive a license. They will have to provide the documentation required by the license application.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The totalizator companies will have to pay an application fee of $10,000 to apply for a license. Any portion of this money not expended during the review of the license will be refunded. If the cost of reviewing of the license application exceeds $10,000, the totalizator company will be assessed those additional costs. If the company is granted a license, it will be assessed a $1,000 license fee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The companies will have the right to conduct business within the Commonwealth.

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

(a) Initially: It will cost the commission roughly $10,000 to review and perform due diligence in connection with each application and will cost roughly $1,000 per year to regulate each totalizator company.

(b) On a continuing basis: It will cost the commission roughly $10,000 to review and perform due diligence in connection with each application and will costs roughly $1,000 per year to regulate each totalizator company.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The implementation of this administrative regulation requires the imposition of application and license fees.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation establishes a $10,000 application fee and a $1,000 license fee.

(9) TIERING: Is tiering applied? Tiering is not applied and this regulation will be applied equally to all parties.

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 230.260

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No estimated change in expenditures or revenues as the cost of implementing this regulation will be offset by the application and license fees it imposes.

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

811 KAR 2:185. Advance deposit account wagering.

RELATES TO: KRS 230.260, 230.290, 230.310, 230.320

STATUTORY AUTHORITY: KRS 230.215, 230.260, 230.310, 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260(2) authorizes the Kentucky Horse Racing Commission to issue licenses to any person or entity that offers advance deposit account wagering to Kentucky residents. This administrative regulation establishes the license application procedures and requirements to offer advance deposit account wagering to Kentucky residents.

Section 1. Definitions. (1) "Account" means an account for advance deposit account wagering with a specific identifiable record of deposits, wagers, and withdrawals established by an account holder and managed by the advance deposit account wagering licensee.

(2) "Account holder" means an individual who successfully completed an application and for whom the advance deposit account wagering licensee has opened an account.

(3) "Advance deposit account wagering" is defined by KRS 230.210(1).

(4) "Advance deposit account wagering licensee" is defined by KRS 230.210(2).

(5) "Applicant" means an individual, person, or entity that has submitted an application for a license pursuant to this administrative regulation.

(6) "Association" is defined by KRS 230.210(5).

(7) "Confidential information" means:

(a) The amount of money credited to, debited from, withdrawn from, or present in any particular account holder's account;

(b) The amount of money wagered by a particular account holder on any race or series of races;

(c) The account number and secure personal identification code of a particular account holder;

(d) The identities of particular racing associations on which the account holder is wagering or has wagered; and

(e) Unless otherwise authorized by the account holder, the name, address, and other information in the possession of the advance deposit account wagering licensee that would identify the account holder to anyone other than the commission or the advance deposit account wagering licensee.

(8) "Individual" means a natural person, at least eighteen (18) years of age, but does not include any corporation, partnership, limited liability company, trust, or estate.

(9) "Kentucky resident" is defined by KRS 230.210(12).

(10) "Nominal change in ownership" is defined by 811 KAR 2:140 Section 1(1).

(11) "Person" means any corporation, whether organized for profit or not, partnership, limited liability company, trust, estate, association, joint venture, or any other group or combination acting as a unit.

(12) "Principal" means any of the following individuals associated with a partnership, trust association, limited liability company, or corporation:

(a) The chairman and all members of the board of directors of a corporation;

(b) All partners of a partnership and all participating members of a limited liability company;

(c) All trustees and trust beneficiaries of an association;

(d) The president or chief executive officer and all other officers, managers, and employees who have policy-making or fiduciary responsibility within the organization;

(e) All stockholders or other individuals who own, hold, or control, either directly or indirectly, five percent (5%) or more of stock or financial interest in the collective organization; and

(f) Any other employee, agent, guardian, personal representative, or lender or holder of indebtedness who has the power to exercise a significant influence over the applicant's or licensee's operation.

(13) "Substantial change in ownership" is defined by 811 KAR 2:140, Section 1(4).

(14) "Telephone account wagering" is defined by KRS 230.210(19).

(15) "Totalizator" or "Totalizator system" 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.

Section 2. License Required to Conduct Advance Deposit Account Wagering. (1) New license applications. Any individual, person, or entity, other than a licensed association engaged in telephone account wagering as defined in KRS 230.210(19) and addressed in KRS 230.378 and KRS 230.379, that offers advance deposit account wagering to Kentucky residents shall apply to the commission for a license pursuant to KRS 230.260(2). Deadlines for new license applications shall be as follows:

(a) Any individual, person, or entity that offered advanced deposit account wagering to Kentucky residents prior to {EFFECTIVE DATE OF REG}, shall apply to the commission for a license by submitting a completed "Initial/Renewal License Application to Conduct Advance Deposit Account Wagering" on or before {60 DAYS AFTER EFFECTIVE DATE}. Between the time that the li-

cense application is submitted and the commission renders a decision, any such individual, person, or entity may continue to operate. The commission shall render a decision within ninety (90) days of receipt of a completed license application. The license shall be effective upon approval of the commission.

(b) Any other individual, person, or entity shall apply to the commission for a license by submitting a completed "Initial/Renewal License Application to Conduct Advance Deposit Account Wagering." The license shall be effective, and the advance deposit account wagering licensee may begin operations, upon approval of the commission.

(2) Renewal applications. A license to conduct advance deposit account wagering shall be renewed annually in accordance with this administrative regulation. A renewal application shall be submitted on the form "Initial/Renewal License Application to Conduct Advance Deposit Account Wagering" on or before September 1 of the preceding year. The commission shall render a decision on the application on or before December 15 of the preceding year. If approved, a renewal license shall be effective January 1.

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

Section 3. Licensing Costs and Fees. (1) In accordance with KRS 230.260(6), the applicant shall pay all costs incurred by the commission in reviewing an application for an initial license, including legal and investigative costs and the cost of other necessary outside professionals and consultants. As an initial payment for these costs, the applicant shall submit, along with a license application, a cashier's check or certified check payable to the commission in the amount of five thousand dollars ($5,000). Any portion of the payment not required to complete the investigation shall be refunded to the applicant within twenty (20) days of the granting, withdrawal, or rejection of the initial license application. To the extent additional costs will be necessary, the applicant shall submit a cashier's check or certified check payable to the commission in an amount reasonably requested by the commission within ten (10) days of receipt of the request. Failure to submit an additional requested payment shall result in suspension of the processing of the license application and may result in denial of the license.

(2) An applicant for a renewal license shall pay all reasonable costs incurred by the commission in reviewing a renewal license, including legal and investigative costs and the cost of other necessary outside professionals and consultants. The applicant shall submit a cashier's check or certified check payable to the commission in an amount reasonably requested by the commission within ten (10) days of receipt of request. Failure to submit such payment shall result in suspension of the processing of renewing the license and may result in denial of the license.

(3) The commission may waive the costs contained in subsections 1 and 2 of this section in part or completely if the applicant has undergone a certification process or other investigative review by a commission approved industry or regulatory body.

(4) An annual license fee of one thousand dollars ($1,000) shall be payable to the commission upon issuance of the original license and thereafter, if a renewal license is granted, on or before January 1 of each year. A license shall not be issued until receipt of the license fee each year. The commission shall track the additional costs required to implement and enforce this regulation and amend the annual fee if necessary to recoup its regulatory costs, however, in no event shall the annual license fee exceed ten thousand dollars ($10,000), as provided in KRS 230.260(2).

Section 4. License Application Procedures. (1) An application for a license shall be in the form and manner prescribed by the commission. The commission may deny a license to any applicant that provides false or misleading information on or omits material information from the application. The application shall include:

(a) The applicant's legal name;

(b) The location of the applicant's principal office;

(c) The name, address, and date of birth of each principal with a five percent (5%) or greater share of ownership or beneficial interest in the applicant;

(d) Audited financial statements for the last three (3) years or, if the applicant does not have audited financial statements, financial and other pertinent information as required by the commission to determine that the applicant is financially capable of operating as a going concern and protecting accounts;

(e) A detailed plan of how the advance deposit account wagering system will operate. The commission may require changes in the proposed plan of operations as a condition of granting a license. No subsequent material changes in the plan of operations may occur unless ordered by the commission or until approved by the commission after receiving a written request;

(f) A list of all personnel processing wagers on races made by Kentucky residents. This list shall be kept current and be provided to the commission upon request; and

(g) Copies of all documents described and required pursuant to the "Initial/Renewal License Application to Conduct Advance Deposit Account Wagering."

(2) In addition to the application requirements contained in subsection (1) of this section, the commission may require:

(a) A Type II SAS 70 report, or replacement reports as approved from time to time by the Auditing Standards Board of the American Institute of Certified Public Accountants, or other independent report in a form acceptable to the commission, completed within the preceding twelve (12) months and other pertinent information as required by the commission to evaluate the applicant's control objectives, control activities, and control processes. The commission may require that a SAS 70 report, or replacement reports as approved from time to time by the Auditing Standards Board of the American Institute of Certified Public Accountants or other independent report in a form acceptable to the commission, be conducted annually in order to receive a renewal license; and

(b) A bond from a surety company admitted in the Commonwealth of Kentucky or other form of financial security such as an irrevocable letter of credit in favor of the Commonwealth of Kentucky in an amount not to exceed five hundred thousand dollars ($500,000) depending upon the financial stability of the applicant, as demonstrated in the applicant's audited financial statements or, if the applicant does not have audited financial statements, financial and other pertinent information as required by the commission to determine that the applicant is financially capable of operating as a going concern and protecting accounts. The bond or letter of credit shall, if necessary, be used to:

1. Comply with and perform the provisions and undertakings of the advance deposit account wagering licensee set forth in the application as finally approved by the commission;

2. Discharge the licensee's financial obligations to account holders who are Kentucky residents;

3. Discharge payment of all taxes and expenses due by the licensee to the Commonwealth; and

4. Discharge the licensee's financial obligations to any racing association or simulcast facility licensed by the commission.

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

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

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

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

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

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

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

(b) The quality of physical facilities and equipment;

(c) The financial ability of the applicant to conduct advance

deposit account wagering;

(d) The protections provided to safeguard accounts, including a certification from the licensee's chief financial officer that account funds will not be comingled with other funds as required in Section 7(6) of this administrative regulation;

(e) The management ability of the applicant and its principals;

(f) Compliance of the applicant with applicable statutes, charters, ordinances, and regulations;

(g) The efforts of the applicant to promote, develop, and improve the horse racing industry in the Commonwealth;

(h) The efforts of the applicant to safeguard and promote the integrity of pari-mutuel wagering in the Commonwealth; and

(i) The economic impact of the applicant upon the Commonwealth.

Section 5. Oral Presentation by Applicant. (1) The commission may require an applicant to make an oral presentation prior to its ruling in order to clarify or otherwise respond to questions concerning the application as a condition to the issuance or renewal of a license.

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

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

Section 6. Additional Information. (1) The commission may request additional information from an applicant if the additional information would assist the commission in deciding whether to issue or renew a license, including:

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

(b) A list of all contracts between the applicant and third parties related to operations. The commission may review such contracts any time upon request.

Section 7. Operations. (1) Before doing business in Kentucky, the licensee must be qualified to do business in Kentucky.

(2) A licensee shall submit a copy of any documents required to be filed with the Kentucky Department of Revenue and any documents related to an audit or investigation by any local, state or federal regulatory agency contemporaneously to the commission.

(3) In addition to the information the commission may request under this or any other applicable regulation or statute, the commission may require the licensee to remit contemporaneously to the commission a copy of any documents required to be filed with any local, state or federal regulatory agency.

(4) A licensee shall submit quarterly reports to the commission providing amounts wagered by Kentucky residents and amounts wagered on Kentucky races as required by KRS 230.260(2).

(5) An applicant shall enter into an agreement with each licensed racing association in the Commonwealth on whose races the applicant offers advance deposit account wagering regarding payment of host fees and any other applicable fees, costs, or payments of any kind to be paid to the licensed association. The licensed racing association and the applicable horsemen's organization shall negotiate a separate agreement for contributions to the purse account generated by advanced deposit account wagering.

(6) An applicant shall not comingle account funds with other funds.

(7) An applicant that does not have audited financial statements for the last three (3) years as referenced in Section 4(1)(d) of this administrative regulation shall provide quarterly financial statements to the commission for the first calendar year of operation.

(8) A licensee must use and communicate pari-mutuel wagers to a totalizator system licensed by the commission.

(9) A licensee must operate and communicate with the totalizator system in such a way as not to provide or facilitate a wagering advantage based on access to information and processing of wagers by account holders relative to persons who wager at licensed associations or simulcast facilities.

(10) All personnel processing wagers made by Kentucky residents must be licensed in the jurisdiction where they are located. If an individual is located in a jurisdiction that is not a racing jurisdiction or that does not require a license, that individual must be licensed in Kentucky.

(11) Accounts shall only be accepted in the name of an individual and shall not be transferable. Only individuals who have established accounts with a licensee may wager through a licensee.

(12) Each account holder shall provide such personal information as the licensee and the commission require, including, but not limited to:

(a) Name;

(b) Principal residence address;

(c) Telephone number;

(d) Social Security number;

(e) Date of birth; and

(f) Other information necessary for account administration.

(13) The information supplied by the account holder shall be verified by the licensee using means acceptable to the commission.

(14) The licensee shall provide each account holder a secure personal identification code and password to be used by the account holder to confirm the validity of every account transaction.

(15) No employee or agent of the licensee shall disclose any confidential information except:

(a) To the commission;

(b) To the account holder as required by this administrative regulation;

(c) To the licensee and its affiliates;

(d) To the licensed association as required by the agreement between the licensee and the association; and

(e) As otherwise required by law.

(16) The licensee shall provide each account holder a copy of account holder rules/terms of agreement and such other information and materials that are pertinent to the operation of the account.

(17) The licensee may refuse to establish an account if it is found that any of the information supplied is false or incomplete or for any other reason the licensee deems sufficient.

(18) Each account shall be administered in accordance with the account holder rules/terms of agreement provided to account holders, including, but not limited to:

(a) Placing of wagers;

(b) Deposits to accounts;

(c) Credits to accounts;

(d) Debits to accounts;

(e) Refunds to accounts;

(f) Withdrawals from accounts;

(g) Minimum deposit requirements;

(h) Fees per wager; and

(i) Rebates.

(19) Each licensee shall have protocols in place and shall publicize to its account holders when its wagers are excluded from a host track's wagering pool. These protocols shall include an immediate electronic mail message to affected account holders and immediate posting on the licensee's website.

(20) A licensee shall maintain complete records of the application and the opening of an account for the life of the account plus two (2) additional years. A licensee shall also maintain complete records of the closing of an account for two (2) years after closing. These records shall be provided to the commission upon request.

(21) A licensee shall maintain complete records of all transactions, including deposits, credits, debits, refunds, withdrawals, fees, wagers, rebates, and earnings for two (2) years. These records shall be provided to the commission upon request.

(22) All wagering conversations, transactions, or other wagering communications, verbal or electronic, shall be recorded by means of the appropriate electronic media, and the tapes or other records of such communications shall be kept by the licensee for a period of two (2) years. These tapes and other records shall be made available to the commission upon request.

(23) The recording of the confirmation of the transaction, as

reflected in the voice or other data recording, shall be deemed to be the actual wager regardless of what was recorded by the totalizator system.

(24) A licensee shall not accept wagers if its recording system is not operable.

(25) The commission may monitor the equipment and staff and review the records of a licensee and any of the transactions conducted by the licensee with regards to wagers made by Kentucky residents.

(26) A licensee may suspend or close any account for violation of its account holder rules/terms of agreement, or any other reason it deems sufficient, provided that when an account is closed, it shall return to the account holder all monies then on deposit within seven (7) calendar days.

Section 8. Transfers of Licenses. (1) A license issued under this administrative regulation is neither transferable nor assignable.

(2) A substantial change in ownership in a licensee shall result in termination of the license unless prior written approval has been obtained from the commission. Any request for approval of a substantial change in ownership shall be made on the form "Advance Deposit Account Wagering Change of Control Form," KHRC 145-02, 06/11. Upon receipt of all required information, the commission shall, as soon as practicable, make a determination whether to authorize and approve the substantial change in ownership.

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

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

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

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

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

Section 9. Duration of License. A license issued under this administrative regulation shall be valid for the calendar year for which it is issued.

Section 10. Penalties and Enforcement. (1) The commission shall have all of the rights, powers, and remedies provided for in KRS Chapter 230, KAR Title 810, and KAR Title 811 to ensure compliance with this administrative regulation, including, but not limited to, revocation, suspension, or modification of a license and the imposition of fines.

(2) Additionally, with respect to any individual, person, or entity that offers advanced deposit account wagering to Kentucky residents without a license issued by the commission, the commission may take such measures as it deems necessary, including referral to the appropriate regulatory and law enforcement authorities for civil action or criminal penalties.

Section 11. Severability. In the event that any section or provision of this administrative regulation is found to be invalid, the remaining sections and provisions of this administrative regulation shall not be affected or invalidated.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Initial/Renewal License Application to Conduct Advance Deposit Account Wagering," KHRC 145-01, 06/11; and

(b) "Advance Deposit Account Wagering Change of Control Form," KHRC 145-02, 06/11.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8:00 a.m. to 4:30 p.m.

(3) This material may also be obtained at the commission's Web site, www.khrc.ky.gov.

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

APPROVED BY AGENCY: June 13, 2011

FILED WITH LRC: June 15, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 27, 2011 at 10:00 a.m., at the Kentucky Horse Racing Commission, Kentucky Horse Park, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by July 20, 2011, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 1, 2011. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person:Susan B. Speckert, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the licensing application procedures for entities that offer advance deposit account wagering on horse races to Kentucky residents.

(b) The necessity of this administrative regulation: The regulation is necessary to provide association licensing standards, requirements, and procedures for offering advance deposit account wagering to Kentucky residents.

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

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This is a new regulation that prescribes procedures, fees, requirements, and criteria when granting or denying an application to offer advance deposit account wagering to Kentucky residents.

(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: Entities that offer advance deposit account wagering to Kentucky residents are affected. Racing associations and horsemen are also affected.

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

(a) List the actions that each of the regulated entities identified

in question (3) will have to take to comply with this administrative regulation or amendment: The entities seeking to offer advance deposit account wagering to Kentucky residents will be required to complete the application form and disclosure requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The applicants will be required to pay an annual licensing fee of $1000. The applicants will also be responsible for paying the cost of any necessary background checks. Depending upon the financial and operational stability of an applicant, a bond of up to $500,000 may have to be posted and a SAS 70 audit may have to be performed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be greater transparency regarding the monies wagered through advance deposit account wagering companies. Race tracks and horsemen will benefit from contribution to purse accounts. The regulation also provides some protections for account holders.

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

(a) Initially: It is unclear at this time if the cost of regulation will exceed the $1000 annual license fee. In the event that the cost does exceed that amount, the commission may seek to amend the annual fee.

(b) On a continuing basis: See above.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: An annual license fee of $1000 is established to cover the regulatory costs. In the event that regulation of these entities proves to be more costly, the commission may seek to amend the annual fee in the future.

(9) TIERING: Is tiering applied? No tiering is applied.

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, 230.310, 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. No estimated change in expenditures or revenues.

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

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

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

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

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

Revenues (+/-)

Expenditures (+/-):

Other Explanation:

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

811 KAR 2:200 Licensing totalizator companies.

RELATES TO: KRS 230.225, 230.260, 230.290, 230.310, 230.320, 230.361, 230.370

STATUTORY AUTHORITY: KRS 230.215, 230.260, 230.310, 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260(3) vests the commission with authority over any totalizator company that provides totalizator services to racing associations and simulcast facilities located in the Commonwealth. KRS 230.260(3) further requires the commission to license any totalizator company under its jurisdiction, regardless of whether the company is located in the Commonwealth, or operates from a location or locations outside of the Commonwealth. This administrative regulation establishes the license application procedures and requirements for totalizator companies that provide totalizator services to racing associations located in the Commonwealth that offer quarter horse, appaloosa or arabian racing.

Section 1. Definitions. (1) "Applicant" means an individual, person, or entity that has submitted an application for a license pursuant to this administrative regulation.

(2) "Individual" means a natural person, at least eighteen years of age, but does not include any corporation, partnership, limited liability company, trust, or estate.

(3) "Nominal change in ownership" is defined in 810 KAR 1:037, 811 KAR 1:037.

(4) "Person" means any corporation, whether organized for profit or not, partnership, limited liability company, trust, estate, association, joint venture, or any other group or combination acting as a unit.

(5) "Principal" is defined in KRS 230.210 when used in the context of a licensed association or an applicant for a license to conduct a horse race meeting; when used in the context of any other type of entity, "Principal" means any of the following individuals associated with a partnership, trust association, limited liability company, or corporation:

(a) The chairman and all members of the board of directors of a corporation;

(b) All partners of a partnership and all participating members of a limited liability company;

(c) All trustees and trust beneficiaries of an association;

(d) The president or chief executive officer and all other officers, managers, and employees who have policy-making or fiduciary responsibility within the organization;

(e) All stockholders or other individuals who own, hold, or control, either directly or indirectly, five percent (5%) or more of stock or financial interest in the collective organization; and

(f) Any other employee, agent, guardian, personal representative, or lender or holder of indebtedness who has the power to exercise a significant influence over the applicant's or licensee's operation.

(6) "Substantial change in ownership" is defined by 810 KAR 1:037, 811 KAR 1:037.

(7) "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.

(8) "Totalizator company" means any person providing totalizator services or equipment to a racing association, simulcast facility, or advanced deposit wagering entity.

Section 2. License Required. (1) Any totalizator company that provides totalizator services to a racing association or simulcast facility located in or that conducts operations in the Commonwealth shall apply to the commission for a license pursuant to KRS 230.260(3). Deadlines for new license applications shall be as follows:

(a) Any totalizator company that provides totalizator services to

a racing association or simulcast facility located in or that conducts operations in the Commonwealth prior to {EFFECTIVE DATE OF REG}, shall apply to the commission for a license by submitting a completed "Initial/Renewal License Application to Provide Totalizator Services" on or before {60 DAYS AFTER EFFECTIVE DATE}. Between the time that the license application is submitted and the commission renders a decision, any such totalizator company may continue to operate. The license shall be effective upon approval of the commission.

(b) Any other totalizator company shall apply to the commission for a license by submitting a completed "Initial/Renewal License Application to Provide Totalizator Services." The license shall be effective, and the totalizator company may begin operations, upon approval of the commission.

(2) Renewal applications. A license to provide totalizator services shall be renewed annually in accordance with this administrative regulation. A renewal application shall be submitted on the form "Initial/Renewal License Application to Provide Totalizator Services" on or before August 1 of the preceding year. The commission shall render a decision on the application on or before December 20. If approved, a renewal license shall be effective January 1.

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

Section 3. Licensing Costs and Fees. (1) In accordance with KRS 230.260(6), the applicant shall pay all costs incurred by the commission in reviewing an application for an initial license, including legal and investigative costs, including the cost of performing background checks on the applicant's employees, owners and principals, and the cost of other necessary outside professionals and consultants. As an initial payment for these costs, the applicant shall submit, along with a license application, a cashier's check or certified check payable to the commission in the amount of ten thousand dollars ($10,000). Any portion of the payment not required to complete the investigation shall be refunded to the applicant within twenty (20) days of the granting, withdrawal or rejection of the initial license application. To the extent additional costs become necessary, the applicant shall submit a cashier's check or certified check payable to the commission in an amount requested by the commission within ten (10) days of receipt of the request. Failure to submit an additional requested payment shall result in suspension of the processing of the license application and may result in denial of the license.

(2) An applicant for a renewal license shall pay all costs incurred by the commission in reviewing a renewal license, including legal and investigative costs and the cost of other necessary outside professionals and consultants. The applicant shall submit a cashier's check or certified check payable to the commission in an amount requested by the commission within ten (10) days of receipt of request. Failure to submit such payment shall result in suspension of the processing of renewing the license and may result in denial of the license.

(3) The commission may waive the requirements of subsections (1) and (2) of this section, in part or completely, if the applicant has undergone a certification process or other investigative review by a commission-approved industry or regulatory body.

(4) An annual license fee one thousand dollars ($1,000) shall be payable to the commission upon issuance of the original license and thereafter, if a renewal license is granted, on or before January 1 of each year. A license shall not be issued until receipt of the license fee each year.

Section 4. License Application Procedures. (1) An application for a license shall be in the form and manner prescribed by the commission. The commission may deny a license to any applicant that provides false or misleading information on or omits material information from the application. The application shall include:

(a) The applicant's legal name;

(b) The location of the applicant's principal office;

(c) The name, address, and date of birth of each principal with a five percent (5%) or greater share of ownership or beneficial interest in the applicant;

(d) Audited financial statements for the last three years or, if the applicant does not have audited financial statements, financial and other pertinent information as required by the commission to determine that the applicant is financially capable of operating as a going concern;

(e) A Standards for Attestation Engagements (SSAE) No. 16 report, or other independent report in a form acceptable to the commission, completed within the preceding 12 months, to assure adequate financial controls are in place and compliance with totalizator standards. The commission may require that a SSAE 16 audit, or other independent report in a form acceptable to the commission, be conducted annually in order to receive a renewal license;

(f) A list of personnel assigned to work in Kentucky, which shall be kept current and be provided to the commission upon request;

(g) A certification of compliance with the Kentucky Horse Racing Commission Totalizator Standards;

(h) An agreement to testing of hardware and software as may be directed by the commission; and

(i) Copies of all documents described and required pursuant to the "Initial/Renewal License Application to Provide Totalizator Services."

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

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

1. Been convicted of any crime of moral turpitude, embezzlement, or larceny, or any violation of any law pertaining to illegal gaming or gambling, or any crime that is inimical to the declared policy of the Commonwealth of Kentucky with regard to horse racing and pari-mutuel wagering thereon;

2. Been convicted in any jurisdiction within ten (10) years preceding initial licensing or license renewal of any crime that is or would be a felony or class A misdemeanor in the Commonwealth of Kentucky;

3. Been identified in the published reports of any federal or state legislative or executive body, or in an opinion of any judicial body, as being a member or associate of organized crime, or of being of notorious or unsavory reputation;

4. Been charged by any federal, state, or local law enforcement authority with a violation of any federal, state, or local law;

5. Had a gaming or totalizator company license revoked in another jurisdiction on grounds that would have been grounds for revoking the license in Kentucky; or

6. Engaged in any other activities that would pose a threat to the public interest or to the effective regulation of horse racing and wagering in Kentucky, or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of racing and wagering or in the operation of the business and financial arrangements incidental thereto; or

7. Been a party to litigation over business practices or disciplinary actions over a business license;

8. Been a party to proceedings in which unfair labor practices, discrimination, or violation of government regulations pertaining to racing or gaming laws was an issue, or bankruptcy proceedings;

9. Failed to satisfy judgments, orders, or decrees; and

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

(b) The quality of physical facilities and equipment;

(c) The management ability of the applicant and its principals;

(d) Compliance of the applicant with applicable statutes, charters, ordinances, and regulations;

(e) The efforts of the applicant to safeguard and promote the integrity of pari-mutuel wagering in the Commonwealth;

Section 5. Oral Presentation by Applicant. (1) Prior to making its ruling, the commission may require an applicant to make an oral presentation concerning its application in order to clarify or other-

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

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

Section 6. Additional Information. (1) The commission may request additional information from an applicant if the additional information would assist the commission in deciding whether to issue or renew a license, including copies of any documents used by the applicant in preparing the application and contracts between the applicant and third parties related to operations.

Section 7. Operations. (1) Before doing business in Kentucky, the licensee must be qualified to do business in Kentucky.

(2) In addition to the information the commission may request under this or any other applicable regulation or statute, the commission may require the licensee to remit contemporaneously to the commission a copy of any documents required to be filed with the Department of Revenue or other regulatory agency.

(3) The licensee shall operate in conformity with the Kentucky Horse Racing Commission Totalizator Standards.

Section 8. Transfers of Licenses. (1) A license issued under this administrative regulation is neither transferable nor assignable.

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

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

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

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

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

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

Section 9. Duration of License. A license issued under this administrative regulation shall be valid for the calendar year for which it is issued.

Section 10. Penalties and Enforcement. (1) The commission shall have all of the rights, powers, and remedies provided for in KRS Chapter 230, KAR Title 810, and KAR Title 811 to ensure compliance with this administrative regulation, including, but not limited to, revocation, suspension, or modification of a license and the imposition of fines.

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

(a) "Initial/Renewal License Application to Provide Totalizator Services" KHRC 150-01, 6/11;

(b) "Totalizator Change of Control Form," KHRC 150-02, 6/11;

(c) "Kentucky Horse Racing Commission Totalizator Standards," KHRC 150-03, 6/11

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8:00 a.m. to 4:30 p.m.

(3) This material may also be obtained at the commission's Web site, www.khrc.ky.gov.

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

APPROVED BY AGENCY: June 13, 2011

FILED WITH LRC: June 15, 2011 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 27, 2011 at 1:00 p.m., at the offices of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by July 20, 2011, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 1, 2011. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person:Timothy A. West, Assistant General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation requires totalizator companies that provide totalizator services to racing associations located in the Commonwealth to be licensed. It establishes application and licensing fees and sets forth the requirements for obtaining a license.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to fulfill the statutory mandate in KRS 230.260(3) which requires totalizator companies under the jurisdiction of the commission to be licensed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.260 vests the commission with jurisdiction over any totalizator company that provides totalizator services to a racing association located in the Commonwealth and requires and such totalizator company to be licensed by the commission. It further allows the commission to impose application and license fees on the totalizator companies and requires it to promulgate administrative regulations which establish conditions and procedures for the licensing of totalizator companies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes application and licensing fees, as well as the conditions and procedures for the licensing of totalizator companies.

(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: There are three major totalizator companies that could be affected by this administrative regulation. At the present time, only one of those companies is doing business in Kentucky. If the other two – or any new totalizator company –

moves into the Commonwealth, they will have to comply with the regulation as well.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities identified in question (3) will have to pay the application fee to apply for a license and the licensing fee to receive a license. They will have to provide the documentation required by the license application.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The totalizator companies will have to pay an application fee of $10,000 to apply for a license. Any portion of this money not expended during the review of the license will be refunded. If the cost of reviewing of the license application exceeds $10,000, the totalizator company will be assessed those additional costs. If the company is granted a license, it will be assessed a $1,000 license fee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The companies will have the right to conduct business within the Commonwealth.

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

(a) Initially: It will cost the commission roughly $10,000 to review and perform due diligence in connection with each application and will cost roughly $1,000 per year to regulate each totalizator company.

(b) On a continuing basis: It will cost the commission roughly $10,000 to review and perform due diligence in connection with each application and will costs roughly $1,000 per year to regulate each totalizator company.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The implementation of this administrative regulation requires the imposition of application and license fees.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation establishes a $10,000 application fee and a $1,000 license fee.

(9) TIERING: Is tiering applied? Tiering is not applied and this regulation will be applied equally to all parties.

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 230.260

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No estimated change in expenditures or revenues as the cost of implementing this regulation will be offset by the application and license fees it imposes.

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

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

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

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

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

Revenues (+/-)

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of June 14, 2011

Call to Order and Roll Call

The June meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, June 14, 2011, at 1:00 p.m., in Room 149 of the Capitol Annex. Senator Joe Bowen, Co-Chair, called the meeting to order, the roll call was taken. The minutes of the May 2011 meeting were approved.

Present were:

Members: Senators Joe Bowen, David Givens, Joey Pendleton, and Alice Forgy Kerr, and Representatives Jimmie Lee, Johnny Bell, and Danny Ford.

LRC Staff: Dave Nicholas, Emily Caudill, Donna Little, Sarah Amburgey, Emily Harkenrider, Karen Howard, and Betsy Cupp.

Guests: Alicia Sneed, Educational Professional Standards Board; Mark Sipek, Personnel Board; Doug Dowell, Laura Ferguson, Jeff Mosley, Department of Revenue; Brian Bishop, Board of Dentistry; Margaret Everson, Mark Mangeot, Karen Waldrop, Kentucky Department of Fish and Wildlife; Sandy Gruzesky, Abigail Powell, Bruce Scott, Department for Environmental Protection; Miranda Denny, Joslyn Olinger Glover; Department of Juvenile Justice; Marc A. Guilfoil, Tim West, Kentucky Horse Racing Commission; Dawn Bellis, Tim House, Department of Housing, Buildings and Construction; Chandra Venettozzi, Stuart Owen, Cabinet for Health and Family Services; and Randall K. Wells, Daymar College.

The Administrative Regulation Review Subcommittee met on Tuesday, June 14, 2011, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

EDUCATION PROFESSIONAL STANDARDS BOARD: Assessment

16 KAR 6:030. Examination prerequisites for principal certification. Alicia A. Sneed, director of legal services, represented the board.

In response to questions by Co-Chair Bowen, Ms. Sneed stated that a passing score minimum requirement would be determined after data was collected based on a defined framework. A percentile would be determined to be passing after the standard setting committee considered all aspects of scoring to ensure diversity and proficiency.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 2 and 5 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 9 to delete provisions that summarized KRS 161.030(4), as required by KRS 13A.120(2)(e) and (f). Without objection, and with agreement of the agency, the amendments were approved.

PERSONNEL BOARD: Board

101 KAR 1:325. Probationary periods. Mark Sipek, executive director, represented the board.

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Office of Income Taxation: Income Tax; General Administration

103 KAR 15:195 & E. Endow Kentucky Tax Credit. Doug Dowell, attorney manager; Laura Ferguson, attorney manager; and Jeff Mosley, general counsel, represented the office.

In response to a question by Co-Chair Bowen, Ms. Ferguson stated that Kentucky had established a nonrefundable tax credit for an endowment or donation to a qualified community program. The department gave preliminary approval prior to the endowment for the tax credit, which was limited to $10,000 or less. The taxpayer then had thirty (30) days to make the endowment gift, and ten (10) additional days to certify that the donation had been made before the credit was appropriated.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 6, 7, and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Board of Dentistry: Board

201 KAR 8:550 & E. Anesthesia and sedation. Brian Bishop, executive director, represented the board.

Co-Chair Bowen stated that this administrative regulation had been thoroughly vetted and he appreciated the board's communications.

TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Game

301 KAR 2:300. Black bears. Margaret Everson, general counsel; Mark Mangeot, legislative liaison; and Dr. Karen Waldrop, wildlife director, represented the department.

A motion was made and seconded to approve the following amendment: to amend Section 9(2) to correct a cross-reference. Without objection, and with agreement of the agency, the amendment was approved.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division of Water: Water Quality Standards

401 KAR 10:030. Antidegradation policy implementation methodology. Sandy Gruzesky, director, and Bruce Scott, commissioner, represented the division.

Co-Chair Bowen thanked the division for working with stakeholders to develop amendments to this administrative regulation.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Juvenile Justice: Division of Community and Mental Health Services: Child Welfare

505 KAR 1:130. Department of Juvenile Justice policies and procedures; juvenile services in community. Miranda Denney, division director, and Joslyn Olinger Glover, attorney, represented the division.

A motion was made and seconded to approve the following amendments: to amend Section 1 and the material incorporated by reference to update citations, for clarity, and to make technical corrections. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Kentucky Horse Racing Commission: Quarter Horse, Appaloosa, and Arabian Racing

811 KAR 2:190. Kentucky Quarter Horse, Appaloosa, and Arabian Development. Marc Guilfoil, deputy executive director, and Tim West, assistant general counsel, represented the commission.

A motion was made and seconded to approve the following amendments: (1) to amend Section 8 to clarify the distribution procedures; and (2) to amend the TITLE, the RELATES TO paragraph, and Sections 1 through 5, 7, and 12 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department of Housing, Buildings and Construction: Division of Plumbing: Plumbing

815 KAR 20:030. License application; qualifications for examination, examination requirements, expiration, renewal, revival or reinstatement of license. Dawn Bellis, general counsel, and Tim House, director, Division of Plumbing, represented the division. Randall K. Wells, chief academic officer, Daymar College, appeared in support of this administrative regulation.

Mr. Wells thanked the division for working to amend this administrative regulation for the benefit of plumbing students.

A motion was made and seconded to approve the following amendment: to amend Section 5 to establish the list of courses approved for substitution of one (1) year of plumbing experience. Without objection, and with agreement of the agency, the amend-

ment was approved.

815 KAR 20:070. Plumbing fixtures.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Health Policy: Certificate of Need

900 KAR 6:030. Certificate of need expenditure minimums. Chandra Venettozzi, health data administrator, represented the office.

In response to questions by Representative Ford, Ms. Venettozzi stated that Kentucky was required by statute to administer the certificate of need process. About thirty-five (35) states have mandated a certificate of need process. The office would follow up with information regarding the experiences of states that had repealed their certificate of need requirements.

In response to a question by Senator Givens, Ms. Venettozzi stated that the office was required by statute to amend this administrative regulation annually. Due to staff changes, this update was not made on a timely basis last year. The decrease in the expenditure minimum would affect purchases of major medical equipment, such as MRI equipment, and capital expenditures.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; and (2) to amend Sections 1 and 2 to comply with the requirement in KRS 216B.130 that the expenditure minimums be updated to reflect changes in the prior twelve (12) month period, rather than twenty-four (24) month period, including to: (a) show that the minimums went from a 3.58 percent decrease to a 2.79 percent decrease; and (b) establish the minimums at $2,669,775, rather than $2,648,079. Without objection, and with agreement of the agency, the amendments were approved.

Data Reporting and Public Use Data Sets

900 KAR 7:030. Data reporting by health care providers.

In response to questions by Senator Givens, Ms. Vennettozzi stated that the office previously allowed records to indicate a race or "other" without limitations. In an effort to protect data integrity, the office previously changed that acceptable error rate from 100 percent to one (1) percent, but has since found the one (1) percent rate to be too restrictive. This amendment increases the acceptable error rate to three (3) percent.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, 4, 7, 13, and 14 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Medicaid Services: Division of Provider Operations: Medicaid Services

907 KAR 1:715. School-based health services. Stuart Owen, regulation coordinator, represented the department.

In response to questions by Senator Givens, Mr. Owen stated that school-based health services were federally mandated and outside the jurisdiction of managed care. School-based health services should not be at risk of being stopped. The division would follow up with more investigation regarding the effect of change to managed care on the school-based health services program.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to insert a definition of “federal financial participation”; (2) to amend Sections 1, 2, and 4 to comply with the drafting requirements of KRS Chapter 13A; and (3) to create a new Section 7 to establish provisions regarding federal financial participation. Without objection, and with agreement of the agency, the amendments were approved.

Other Business: Co-Chair Bowen introduced and welcomed businessman, Terry Woodward. Staff introduced and welcomed new staff member, Betsy Cupp.

The following administrative regulations were deferred to the July 12, 2011, meeting of the Subcommittee:

PERSONNEL CABINET: Personnel Cabinet, Classified

101 KAR 2:095 & E. Classified service administrative regulations.

101 KAR 2:102 & E. Classified leave administrative regulations.

Personnel Cabinet, Unclassified

101 KAR 3:015 & E. Leave administrative regulations for the unclassified services.

GENERAL GOVERNMENT CABINET: Board of Interpreters for the Deaf and Hard of Hearing: Board

201 KAR 39:010. Definitions.

201 KAR 39:030. Application; qualifications for licensure; and certification levels.

201 KAR 39:040. Fees.

201 KAR 39:050. Renewal of licenses and extension of temporary licenses.

201 KAR 39:060. Reinstatement of license subject to disciplinary action.

201 KAR 39:070. Application and qualifications for temporary licensure.

201 KAR 39:080. Reciprocity.

201 KAR 39:090. Continuing education requirements.

201 KAR 39:100. Complaint procedure.

201 KAR 39:120. Code of ethics.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Community Based Services: Division of Protection and Permanency: Child Welfare

922 KAR 1:420 & E. Child fatality or near fatality investigations.

The Subcommittee adjourned at 1:35 p.m. until July 12, 2011.

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 June 2, 2011

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 June 2, 2011, having been referred to the Committee on June 1, 2011, pursuant to KRS 13A.290(6):

301 KAR 3:100
301 KAR 2:172

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 June 2, 2011 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE REVIEW OF ADMINISTRATIVE REGULATIONS

Meeting of June 13, 2011

702 KAR 7:065

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 June 13, 2011 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE REVIEW OF ADMINISTRATIVE REGULATIONS
Meeting of June 15, 2011

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Health and Welfare for its meeting of June 15, 2011, having been referred to the Committee on June 1, 2011, pursuant to KRS 13A.290(6):

201 KAR 20:490

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the June 15, 2011 meeting, which are hereby incorporated by reference.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates **A - 2**

The Locator Index lists all administrative regulations published in VOLUME 38 of the Administrative Register from July 2011 through June 2012. 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 37 are those administrative regulations that were originally published in VOLUME 37 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2011 bound Volumes were published.

KRS Index **A - 7**

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 38 of the Administrative Register.

Technical Amendment Index **A - 9**

The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the 2011 bound Volumes. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10) or 13A.312(2). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published in the Administrative Register. NOTE: Copies of the technically amended administrative regulations are available for viewing on the Legislative Research Commission Web site at http://www.lrc.ky.gov/home.htm.

Subject Index **A - 10**

The Subject Index is a general index of administrative regulations published in VOLUME 38 of the Administrative Register, and is mainly broken down by agency.

VOLUME 37

The administrative regulations listed under VOLUME 37 are those administrative regulations that were originally published in Volume 37 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2011 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
**** Emergency expired after 180 days
(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.)

Regulation Number	37 Ky.R. Page No.	Effective Date
31 KAR 5:010E	2128	2-1-11
Replaced	2828	7-1-11
31 KAR 6:030E	2352	3-10-11
32 KAR 1:030E	1381	11-2-10
32 KAR 1:190E	1382	11-2-10
32 KAR 2:130E	2130	2-7-11
101 KAR 2:095E	2522	3-31-11
101 KAR 2:102E	2525	3-31-11
101 KAR 3:015E	2530	3-31-11
103 KAR 15:195E	2535	4-1-11
201 KAR 8:008E	2807	4-21-11
201 KAR 8:532E	2808	4-21-11
201 KAR 8:550E	2143	2-2-11
201 KAR 8:562E	2812	4-21-11
201 KAR 43:010E	2817	4-29-11
201 KAR 43:020E	2818	4-29-11
201 KAR 43:030E	2820	4-29-11
201 KAR 43:040E	2821	4-29-11
401 KAR 51:052E	2352	3-14-11
815 KAR 10:070E	2824	5-10-11
922 KAR 1:420E	1960	1-3-11

ORDINARY ADMINISTRATIVE REGULATIONS:

Regulation Number	37 Ky.R. Page No.	Effective Date
13 KAR 2:060		
Amended	2250	
As Amended	2539	
16 KAR 3:050		
Amended	1500	
As Amended	1963	
16 KAR 6:030		
Amended	2665	
31 KAR 5:010		
Amended	2254	
As Amended	2542	
31 KAR 6:030		
Amended	2443	
As Amended	2828	7-1-11
32 KAR 1:030		
Amended	1502	
32 KAR 1:190		
Amended	1504	
32 KAR 2:130		
Amended	2256	
101 KAR 1:325		
Amended	2666	
101 KAR 2:095		
Amended	2669	
101 KAR 2:102		
Amended	2672	
101 KAR 3:015		
Amended	2677	
102 KAR 1:178	2303	
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SYMBOL KEY:

* Statement of Consideration not filed by deadline

** Withdrawn, not in effect within 1 year of publication

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(r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation

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EMERGENCY ADMINISTRATIVE REGULATIONS:
(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

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SYMBOL KEY:
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(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 2011 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.

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