ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 38, NUMBER 12
FRIDAY, JUNE 1, 2012

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ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

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FRIDAY, JUNE 1, 2012

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MEETING NOTICE: ARRS

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet June 12, 2012 at 1:00 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages **1931-1932** of this Administrative Register.

EARRS MEETING NOTICE

The Education Assessment and Accountability Review Subcommittee is tentatively scheduled to meet at 1:00 p.m., Tuesday, June 12, 2012 in room 131, Capitol Annex, Frankfort, Kentucky.

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 2011 Edition of **KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE**.

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

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

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
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Game

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301 KAR 2:049. Small game and furbearer hunting and trapping on public areas.

301 KAR 2:081. Transportation and holding of live native wildlife.

301 KAR 2:082. Transportation and holding of live exotic wildlife.

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Hunting and Fishing

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

Filing and Publication

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

Public Hearing and Public Comment Period

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

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

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

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

Review Procedure

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

STATEMENT OF EMERGENCY
103 KAR 31:170E

This emergency administrative regulation is being promulgated in order to provide Kentucky taxpayers the information necessary to comply with Kentucky tax laws and take advantage of the sales and use tax refunds made available to those who have incurred expenses of repairing or replacing a building damaged or destroyed by a disaster within a federally declared disaster area under legislation enacted by the recent regular session of the Kentucky General Assembly (2012 Ky. Acts ch. 145). This emergency administrative regulation is necessary to provide the public with guidance on how to properly document sales and use tax paid on building materials during the current disaster recovery period and how to file related tax refund claims to ensure that legal building owners receive timely reimbursements for applicable repair and construction expenses. This emergency administrative regulation shall be replaced by an ordinary administrative regulation being filed with the Administrative Regulations Compiler contemporaneously with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
THOMAS B. MILLER, Commissioner

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Sales and Excise Taxes
(New Emergency Administrative Regulation)

103 KAR 31:170E. Disaster Area Relief Sales and Use Tax Refunds.

RELATES TO: 139.720, 139.770
STATUTORY AUTHORITY: KRS 131.130(1), 139.710, 2012 Ky. Acts ch. 145, sec. 1(7)(a)
EFFECTIVE: May 11, 2012
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. KRS 139.710 authorizes the department to administer the provisions of KRS Chapter 139, relating to the assessment, collection, refund, and administration of sales and use taxes. 2012 Ky. Acts ch. 145 establishes the tax refund provisions for sales and use tax paid on building materials purchased for the purpose of repairing or replacing a building damaged or destroyed by a disaster within a disaster area.

Section 1. Definitions. (1) "Building materials" is defined in 2012 Ky. Acts ch. 145, sec. 1(1)(a).
(2) "Disaster" is defined in 2012 Ky. Acts ch. 145, sec. 1(1)(b).
(3) "Disaster area" is defined in 2012 Ky. Acts ch. 145, sec. 1(1)(c).
(4) "Qualifying construction" means:
(a) Construction that repairs the portion of a building damaged by a disaster in a disaster area; or
(b) Construction that replaces a building damaged by a disaster in a disaster area.

Section 2. Refund Application Requirements. (1) Requests for refunds shall be filed with the Department of Revenue after completion of the "qualifying construction" and within three (3) years from the date the disaster area is declared.
(2) Refund requests shall be postmarked, electronically submitted, or if delivered by messenger, hand-stamped by the department by the date required in subsection (1) of this section to qualify for consideration and shall include the following completed information:
(a) Application for Kentucky Disaster Relief Refund, Form 51A600;
(b) Information Sharing and Assignment Agreement for Disaster Relief Refund Claims, Form 51A601;
(c) Expenditure Report for Building Materials Disaster Relief Refunds, Form 51A602;
(d) Copies of contractor invoices to the legal building owner, if applicable;
(e) Related sample sales receipts of "building materials" purchased from each vendor;
(f) Photographs of disaster damage and related construction;
(g) Other applicable documents supporting the refund claim; and
(h) One of the following types of documentation:
1. Confirmation letter that the legal building owner is eligible for assistance from the Federal Emergency Management Agency (FEMA), United States Department of Homeland Security because of property damage from the disaster; or
2. A copy of the insurance claim filed for the building damage sustained in the disaster.
(3) Any request for a refund filed with the Department after the three (3) year period referred to in subsection (1) of this section shall be denied.

Section 3. Record Keeping Requirements. The legal owner and other applicable parties shall keep adequate and complete records supporting the refund request for periods not less than four (4) years as provided for in KRS 139.720. The department may audit the records of all parties involved as necessary to verify the refund request and to ensure compliance.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Application for Kentucky Disaster Relief Sales and Use Tax Refund", Form 51A600, April 2012;
(b) "Information Sharing and Assignment Agreement for Disaster Relief Refund Claims", Form 51A601, April 2012; and
(c) "Expenditure Report for Building Materials Disaster Relief Refunds", Form 51A602, April 2012.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Revenue, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. until 5 p.m.

THOMAS B. MILLER, Commissioner
APPROVED BY AGENCY: May 11, 2012
FILED WITH LRC: May 11, 2012 at 1 p.m.
CONTACT PERSON: Devon Hankins, Policy Advisor and Legislative Liaison, Office of General Counsel, Office of the Secretary, Finance and Administration Cabinet, 392 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-6660, fax (502) 564-9875.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation clarifies the procedure for obtaining a refund of sales and use taxes paid on qualifying purchases made for the purpose of rebuilding or replacement construction in a federally declared disaster area in Kentucky.
(b) The necessity of this administrative regulation: It provides guidance to those individuals who qualify for such relief to assist in the process of obtaining the appropriate refund.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(1) and 2012 Kentucky Acts Chapter 145 Section 7(a) authorizes the department to promulgate administrative regulations and prescribe forms necessary to implement and administer Kentucky's tax laws.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides clarification for affected taxpayers to properly assess and report relevant damage and properly apply for the appropriate sales and use tax refund.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Not Applicable

(b) The necessity of the amendment to this administrative regulation: Not Applicable

(c) How the amendment conforms to the content of the authorizing statutes: Not Applicable

(d) How the amendment will assist in the effective administration of the statutes: Not Applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect legal building owners with damaged or destroyed structures throughout the 23-county federal disaster area declared in the wake of storms and tornados that swept across the Commonwealth Wednesday, February 29, 2012, through Saturday, March 3, 2012. According to available reports, the storms destroyed 650 homes and damaged another 1,550. In addition, numerous businesses were also damaged or destroyed. Prospectively, this regulation will also relate to those impacted by future disaster areas.

(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 provides guidance on how building owners with damage or loss may obtain refunds of sales and use tax paid on building materials used to repair or replace damaged or destroyed buildings by timely filing refund applications and submitting appropriate documentation whereby the Department may identify the original tax paid and facilitate a refund back to the building owner.

(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 only minimal cost to complete the refund application, expenditure reports from contractors and vendors, information sharing agreements from related parties and other documentation already provided to building owners by insurance carriers or the Federal Emergency Management Agency.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with the regulation will ensure the appropriate and expeditious processing of the sales and use tax refund claims related to the disaster relief.

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

(a) Initially: Minimal costs should be incurred to create and disseminate the necessary educational materials and are to be covered by the general administrative expenses of the Department.

(b) On a continuing basis: The Department of Revenue will not incur additional costs to monitor this regulation. Any additional actions will be absorbed within existing budget provisions.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied because the requirements of this regulation apply equally to all taxpayers in the qualifying areas.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(1), KRS 139.710, and 2012 Kentucky Acts Chapter 145, sec. 1(7)(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. The Department of Revenue will incur minimal additional costs to develop and disseminate educational materials to affected taxpayers. No additional expenditures are anticipated for any agency.

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue.

(c) How much will it cost to administer this program for the first year? The additional cost should be minimal and will be absorbed in the normal operating cost of the Department.

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

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

Revenues: (+/)

Expenditures (+/-)

Other Explanation:

STATEMENT OF EMERGENCY

405 KAR 10:011E

KRS 350.028 authorizes the cabinet to promulgate administrative regulations in order to accomplish the purposes of KRS Chapter 350. As part of this regulatory package the cabinet is repealing two (2) administrative regulations 405 KAR 10:010 and 10:020 and is filing an emergency administrative regulation (405 KAR 10:015E) which will contain the provisions in the two (2) repealed administrative regulations. This emergency administrative regulation is necessary to avoid overlapping regulatory provisions. The emergency administrative regulation will not be replaced by an ordinary repealer administrative regulation.

STEVEN L. BESHEAR, Governor
LEONARD K. PETERS, Secretary

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Permits
(Emergency Repealer)

405 KAR 10:011E. Repeal of 405 KAR 10:010 and 10:020.

RELATES TO: KRS 350.020, 350.060, 350.062, 350.064, 350.151, 350.465, 30 C.F.R. Parts 730-733, 735, 800.11, 800.60, 917, 30 U.S.C. 1253, 1255

STATUTORY AUTHORITY: KRS 350.028

EFFECTIVE DATE: May 4, 2012

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028 authorizes the cabinet to promulgate administrative regulations in order to accomplish the purposes of KRS Chapter 350. The department is promulgating a new administrative regulation related to bonding surface disturbances on mine sites. As part of this new administrative regulation the department intends on moving the information previously in these administrative regulations into the new administrative regulation, 405 KAR 10:015.

Section 1. The following administrative regulations are hereby repealed:

(1) 405 KAR 10:010, General requirements for performance bond and liability insurance; and

(2) 405 KAR 10:020, Amount and duration of performance bond.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: May 4, 2012

FILED WITH LRC: May 4, 2012 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 21, 2012 at 10:00 a.m. (Eastern Time) at Conference Room D-16 of the Department for Natural Resources at #2 Hudson Hollow, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing June 14, 2012, 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 July 2, 2012. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, #2 Hudson Hollow, Frankfort, Kentucky 40601, phone (502) 564-6940, fax (502) 564-5698, email Michael.Mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals two administrative regulations, 405 KAR 10:010 and 10:020, whose contents are being moved into a new administrative regulation 405 KAR 10:015.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal 405 KAR 10:010 and 10:020.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 13A.310 directs administrative bodies to repeal administrative regulations that are no longer necessary or required. This administrative regulation repeals two administrative regulations whose contents are being relocated into a new administrative regulation which will contain all information on bonding surface mine disturbances.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation repeals two administrative regulations whose contents are being relocated into a new administrative regulation which will contain all information on bonding surface mine disturbances.

(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: NA

(b) The necessity of the amendment to this administrative regulation: NA

(c) How the amendment conforms to the content of the authorizing statutes: NA

(d) How the amendment will assist in the effective administration of the statutes: NA

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact all surface coal mine permit holders. There are approximately 1844 total permits currently under bond.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation repeals 405 KAR 10:010 and 10:020.

(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 associated with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All information related to bonding on mines with a surface disturbance have been moved to one administrative regulation 10:015. Therefore all the information will be located in one location.

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

(a) Initially: This new administrative regulation will not increase costs to the administrative body.

(b) On a continuing basis: There will be no continuing costs to the agency.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General fund and federal fund dollars will be used to fund the provisions of the administrative regulations which will be repealed and relocated into another 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 not be a need to increase fees or funding to administer this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation will not increase nor does it establish any fees.

(9) TIERING: Is tiering applied? No. This administrative regulation repeals two other administrative regulations.

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 of Mine Permits and Division of Mine Reclamation and Enforcement.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13A.310.

4. Estimate the effect of this administrative regulation on the expenditures and revenues 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 new administrative regulation will not generate any funds for use by the cabinet.

(b) How 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 new administrative regulation will not generate any funds for use by the cabinet on a continuing basis.

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

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

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: NA

STATEMENT OF EMERGENCY
405 KAR 10:015E

KRS 350.064 requires an applicant to file a reclamation bond with the cabinet before a permit is issued. A study was conducted by the federal Office of Surface Mining Reclamation and Enforcement (OSMRE) that determined the current bonds required by the Commonwealth are severely inadequate to cover the costs of reclamation. In light of this study the cabinet has been in discussions with industry representatives, OSMRE and members from the environmental community to develop an approach to address these concerns. The cabinet submitted a plan developed through the aforementioned process to address the bonding inadequacy on February 9, 2012. By letter dated May 1, 2012, the federal OSMRE has advised that it does not find the submission sufficient and has invoked its authority under Sec. 733 of the federal Surface Mining Control and Reclamation to require more timely action on the part of the Commonwealth to address the inadequacy. Without action, the cabinet is in jeopardy of losing federal funds distributed by the OSMRE to the Department for Natural Resources as part of a matching grant, the ability to set bonding amounts for Kentucky mining operations, and loss of funding for Kentucky's abandoned mine lands program. This emergency administrative regulation is necessary to immediately implement certain provisions of the cabinet's plan while the identical ordinary administrative regulation is pending. The emergency administrative regulation will be replaced by an ordinary administrative regulation.

STEVEN L. BESHEAR, Governor
LEONARD K. PETERS, Secretary

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Permits
(New Emergency Administrative Regulation)

405 KAR 10:015E. General bonding provisions.

RELATES TO: KRS 350.020, 350.060, 350.062, 350.064, 350.093, 350.095, 350.100, 350.110, 350.151, 350.465

STATUTORY AUTHORITY: KRS 350.060, 350.062, 350.064, 350.093, 350.095, 350.100, 350.110, 350.151, 350.465

EFFECTIVE: May 4, 2012

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 authorizes the cabinet to promulgate administrative regulations to establish procedures for determining amounts for performance bonds for surface coal mining operations. This administrative regulation specifies criteria for the base determination of bond amounts and requires certain periods of liability during which the bonds must remain in effect. This administrative regulation establishes requirements for filing and maintaining performance bonds, and provides for adjustments in bond amounts and additional information related to minimum bonds and application of bonds to ensure performance of the requirements of KRS Chapter 350 in the event work must be performed by the cabinet, taking into consideration such things as topography, geology, future land use and the difficulty of reclamation.

Section 1. Bonding Requirements. (1) An applicant shall not disturb surface acreage or extend any underground shafts, tunnels, or operations prior to receipt of approval from the cabinet of a performance bond covering areas to be affected by surface operations and facilities.

(2) After an application for a new, amended, revised or renewed permit to conduct surface coal mining and reclamation operations has been approved under 405 KAR Chapter 8, but before the permit is issued, the applicant shall file with the cabinet, on a form prescribed and furnished by the cabinet, a performance bond payable to the cabinet. The applicant shall file the Performance Bond, Form SME-42, June 1999, for operations on lands other than federal lands, or the Performance Bond for Surface Coal Mining and Reclamation on Federal Lands, Form SME-42-F, June 1999, for operations on federal lands. The performance bond shall be conditioned upon the faithful performance of all the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the provisions of the reclamation plan and permit, and shall cover all surface coal mining and reclamation operations to be conducted within the permit area or increment thereof until all reclamation requirements of 405 KAR Chapters 7 through 24 have been met. The amount, duration, type, conditions and terms of the performance bond shall conform to the requirements of this administrative regulation.

(3) No permit shall be revised or amended to include additional area unless the liability of the current bond is extended to cover the entire permit area or increment as revised or amended, and the liability of the supplemental bond covers the entire permit area as revised or amended. Unless these conditions are met with respect to the bond, the additional area shall be permitted as a separate increment of the current permit area or under a new permit.

(4) A rider to the applicable performance bond, confirming coverage of the revision, shall be submitted by the applicant if a revision to a permit does not change the acreage of the permit area or increment but:

(a) Adds a coal washer, a crush and load facility, a refuse pile, or a coal mine waste impoundment to the existing permit; or

(b) Alters the boundary of a permit area or increment.

Section 2. Terms and Conditions of Performance Bond. (1) The performance bond shall be in an amount determined by the cabinet as provided in Sections 6, 7, and 8 of this administrative regulation.

(2) The performance bond shall be payable to the cabinet.

(3) The performance bond shall be conditioned upon faithful performance of all of the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24 and the conditions of the permit and shall cover the entire permit area or such incremental area as the cabinet has approved pursuant to Section 4(2) of this administrative regulation.

(4) The duration of the bond shall be for a time period provided in Section 9 of this administrative regulation.

(5) Surety bonds shall be subject to the following conditions:

(a) The cabinet shall not accept the bond of a surety company unless the bond shall not be cancelable by the surety at any time for any reason including, but not limited to, nonpayment of premium or bankruptcy of the permittee during the period of liability. Surety bond coverage for permitted lands not disturbed may be cancelled with the written approval of the cabinet, provided the surety gives written notice to both the permittee and the cabinet of the intent to cancel prior to the proposed cancellation. Such notice shall be by certified mail. Cancellation shall not be effective for lands subject to bond coverage which are affected after receipt of notice, but prior to approval by the cabinet. The cabinet may approve such cancellation only if a replacement bond has been filed by the permittee, or if the permit area has been reduced by revision to the extent that the remaining bond amount, after cancellation, is sufficient to cover all the costs attributable to the completion of reclamation operations on the reduced permit area in accordance with Section 10 of this administrative regulation. The cabinet shall advise the surety, within thirty (30) days after receipt of a notice to cancel bond, whether the bond may be cancelled on an undisturbed area.

(b) The bond shall provide that the surety and the permittee shall be jointly and severally liable.

(c)1. The surety shall give prompt notice to the permittee and the cabinet of any notice received or action filed alleging the insolvency or bankruptcy of the surety, or alleging any violations of regulatory requirements which could result in suspension or revocation of the surety's license to do business.

2. In the event the surety becomes unable to fulfill its obligations under the bond for any reason the surety shall promptly provide written notice to the permittee and the cabinet.

3. Upon the incapacity of a surety by reason of bankruptcy, insolvency, or suspension or revocation of its license or certificate of authority, the permittee shall be deemed to be without proper bond coverage and shall promptly notify the cabinet. However, nothing herein shall relieve the permittee of responsibility under the permit or the surety of liability on its bond. The cabinet shall issue a notice to the permittee specifying a reasonable period to replace

bond coverage, not to exceed ninety (90) days. If an adequate bond is not posted by the end of the period allowed, the permittee shall cease coal extraction and coal processing operations and shall comply with the provisions of 405 KAR 16:010, Section 6, or 405 KAR 18:010, Section 4, and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan. Coal extraction and coal processing operations shall not resume until the cabinet has determined that an acceptable bond has been posted. If an acceptable bond has not been posted by the end of the period allowed, the cabinet may suspend the permit until acceptable bond is posted.

(d) A surety bond shall be executed by the operator and a corporate surety licensed to do business in the Commonwealth of Kentucky.

(6) Collateral bonds may include cash deposits with the cabinet, certificates of deposit, and letters of credit. Collateral bonds, except for letters of credit, shall be subject to the following conditions:

(a) The cabinet or its authorized agent shall obtain possession of and keep in custody all collateral deposited by the applicant, until authorized for release or replacement as provided in this chapter.

(b) The cabinet shall require that certificates of deposit be assigned to the cabinet or its authorized agent in writing, through the submittal of Escrow Agreement Form SME-64, July 2000, and the assignment evidenced on the books of the bank issuing such certificates.

(c) The cabinet shall not accept an individual certificate of deposit unless it is issued by a FDIC or FSLIC insured financial institution, and in no event shall the cabinet accept a denomination in excess of the maximum insurable amount as determined by FDIC and FSLIC.

(d) The cabinet shall require the issuer of certificates of deposit to waive all rights of setoff or liens which it has or might have against those certificates.

(e) Persons with an interest in collateral posted as a bond, and who desire notification of actions pursuant to the bond, shall request the notification in writing to the cabinet at the time the collateral is offered.

(f) The cabinet shall require the applicant to deposit sufficient amounts of certificates of deposit, so as to assure that the cabinet will be able to liquidate those certificates prior to maturity, upon forfeiture, for the amount of the bond required by this chapter.

(7) Letters of credit shall be subject to the following conditions:

(a) The letter may only be issued by a bank organized or authorized to do business in the United States. Any letter of credit issued by a non-Kentucky lending institution must be confirmed by an approved Kentucky lending institution.

(b) Letters of credit shall be irrevocable.

(c) The letter must be payable to the cabinet upon demand and receipt from the cabinet of a notice of forfeiture issued in accordance with 405 KAR 10:050, or in the event the bank wishes to terminate the letter on its expiration date, the cabinet may draw upon demand. The Irrevocable Standby Letter of Credit, Form SME-72 July 1994, and the Confirmation of Irrevocable Letter of Credit, For SME-72-A, July 1994, shall be submitted to the cabinet, as necessary.

(d)1. The issuer shall give prompt notice to the permittee and the cabinet of any notice received or action filed alleging the insolvency or bankruptcy of the issuer, or alleging any violations of regulatory requirements which could result in suspension or revocation of the issuer's charter or license to do business;

2. In the event the issuer becomes unable to fulfill its obligations under the letter of credit for any reason, notice shall be given immediately to the permittee and the cabinet;

3. Upon the incapacity of an issuer by reason of bankruptcy, insolvency or suspension or revocation of its charter or license, the permittee shall be deemed to be without proper performance bond coverage and shall promptly notify the cabinet. However, nothing herein shall relieve the permittee of responsibility under the permit or the issuer of liability on the letter of credit. The cabinet shall issue a notice to the permittee specifying a reasonable period to replace bond coverage, not to exceed ninety (90) days. If an adequate bond is not posted by the end of the period allowed, the permittee shall cease coal extraction and coal processing operations and shall comply with the provisions of 405 KAR 16:010, Section 6, or 405 KAR 18:010, Section 4, and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan. Coal extraction and coal processing operations shall not resume until the cabinet has determined that an acceptable bond has been posted. If an acceptable bond has not been posted by the end of the period allowed, the cabinet may suspend the permit until acceptable bond is posted.

(8) When a permittee chooses to combine two (2) or more bonds for one (1) permit area or increment, the bonds may be accompanied by a schedule, acceptable to the cabinet and agreed to by all parties, which sets forth the agreed distribution of bond amounts to be released or reduced under 405 KAR 10:040 and Section 10 of this administrative regulation, respectively. If no schedule is submitted, the cabinet may release equal percentages of each bond.

Section 3. Types of Performance Bond. (1) The cabinet shall approve performance bonds of only those types which are set forth in this section.

(2) The performance bond shall be either:

(a) A surety bond;

(b) A collateral bond;

(c) A combination of the above bonding types; or

(d) Bonds filed pursuant to the provisions of the Kentucky Bond Pool Program (405 KAR 10:200, KRS 350.595, and 350.700 through 350.755).

Section 4. Bonding Methods. The method of performance bonding for a permit area shall be selected by the applicant and approved by the cabinet prior to the issuance of a permit, and shall consist of one (1) of the following methods:

(1) Method "S" - single area bonding. A single area bond is a bond which covers the entire permit area as a single undivided area, for which the applicant shall file the entire bond amount required by the cabinet prior to issuance of the permit. Liability under the bond shall extend to every part of the permit area at all times. Except as provided in Section 9(2) of this administrative regulation regarding extended bond liability, there shall be no release of all or part of the bond amount for completion of a particular phase of reclamation on any part of the permit area under 405 KAR 10:040 until that phase of reclamation has been successfully completed on the entire permit area.

(2) Method "I" - incremental bonding. Incremental bonding is a method of bonding in which the permit area is divided into individual increments, each of which is bonded separately and independently, and for which bond is filed as operations proceed through the permit area.

(a) The permit area shall be divided into distinct increments which shall be subject to approval by the cabinet. Each increment shall be of sufficient size and configuration to provide for efficient reclamation operations should reclamation operations by the cabinet become necessary. If the approved postmining land use is of such nature that successful implementation of the postmining land use capability depends upon an area being integrally reclaimed, then that area shall be contained within a single increment. These increments shall be clearly identified on maps submitted in the permit application under 405 KAR Chapter 8, and the applicant shall describe the approximate time schedule for beginning operations in each increment.

(b) Prior to issuance of a permit, the applicant shall file with the cabinet the full bond amount required by the cabinet for the first increment or increments of the permit area to be disturbed, which shall be not less than the minimum bond required for the permit area required under Section 7 of this administrative regulation.

(c) The permittee shall not engage in any surface coal mining and reclamation operations on any increment of the permit area unless the full bond amount required by the cabinet has been filed with the appropriate regional office of the department for that increment, the cabinet has verified the validity of the bond, and written authorization to conduct surface coal mining and reclamation operations on that increment is issued by the administrator of the regional office. No credit shall be given for reclamation on other

increments.

(d) The boundaries of each increment shall be physically marked at the site in a manner approved by the cabinet.

(e) The bond amount for an increment shall be released or forfeited independently of any other increment of the permit area, and liability under the performance bond shall extend only to the increment expressly covered by the bond. A single bond amount may be filed to cover more than one (1) increment, in which case the increments so covered shall be treated as a single increment.

(f) Except as provided in Section 9(2) of this administrative regulation regarding extended bond liability, there shall be no release of bond for completion of a phase of reclamation on any part of an increment until that phase of reclamation has been successfully completed on the entire increment.

(g) When the bond for an increment is completely released under 405 KAR 10:040, the increment shall be deleted from the permit area.

Section 5. Substitution of Bonds. (1) The cabinet may allow permittees to substitute existing surety or collateral bonds for equivalent surety or collateral bonds, if the liability which has accrued against the permittee on the permit area or increment is transferred to such substitute bonds.

(2) The cabinet shall not release existing performance bonds until the permittee has submitted and the cabinet has approved acceptable substitute performance bonds. A substitution of performance bonds pursuant to this section shall not constitute a release of bond under 405 KAR 10:040.

(3) The cabinet may refuse to allow substitution of bonds if an action for revocation or suspension of the permit covered by the bond is pending or if there is a pending action for forfeiture of the bond.

Section 6. Determination of Bond Amounts. (1) In determining the bond amount the cabinet shall estimate the cost to the cabinet if it had to perform the reclamation, restoration and abatement work required of a person who conducts surface coal mining and reclamation operations under KRS Chapter 350, 405 KAR Chapters 7 through 24 and the permit. This amount shall be based on:

(a) The estimated costs submitted by the permittee in accordance with 405 KAR 8:030, Section 24(4), and 405 KAR 8:040, Section 24(4);

(b) The additional estimated costs to the cabinet which may arise from applicable public contracting requirements or the need to bring personnel and equipment to the permit area after its abandonment by the permittee to perform reclamation, restoration, and abatement work;

(c) All additional estimated costs necessary, expedient, and incident to the satisfactory completion of the requirements identified in this section;

(d) An additional amount based on factors of cost changes during the previous five (5) years for the types of activities associated with the reclamation to be performed; and

(e) Such other cost information as may be required by or available to the cabinet.

(2) If the reclamation cost calculated submitted in a permit application is higher than the minimum bond or bond calculated by the cabinet, the higher calculation will be used in any issued permit.

(3) The cabinet shall review the bonding amounts identified in Sections 7 and 8 of this administrative regulation at a minimum of every two (2) years to determine if the amounts are adequate due to inflation and increases in reclamation costs.

Section 7. Minimum Bond Amount. The minimum amount of the bond for surface coal mining and reclamation operations at the time the permit is issued or amended shall be:

(1) $75,000 for the entire surface area under one (1) permit;

(2) $75,000 per increment for incrementally bonded permits, subject to Section 4(2) of this administrative regulation;

(3) $50,000 for a permit or increment operating on previously mined areas, as defined in of 405 KAR 8:001, Section 1(86), to be evaluated by the cabinet; or

(4) $10,000 for underground mines that have only underground operations.

Section 8. Bonding Rate of Additional Areas. Areas of a surface coal mine and reclamation operation shall be bonded at the following rates for any permit issued by the Division of Mine Permits:

(1) Coal haul roads, other mine access roads, and mine management areas shall be bonded at $2,500 per acre and each fraction thereof.

(2) Refuse disposal areas shall be bonded at a minimum rate of $7,500 per acre and each fraction thereof.

(3) An embankment sediment control pond shall be bonded at a rate of $10,000 per acre and each fraction thereof, with each pond being measured separately, if the pond is:

(a) Located off-bench; and

(b) Located downstream and outside the proposed mining or spoil storage area.

(c) This rate may be applied to partial embankment structures as deemed necessary by the cabinet to meet the requirements of Section 6(1) of this administrative regulation.

(4) Coal preparation plants shall be bonded at the base acreage rate, discussed in paragraph (6) of this Section, in addition to the costs associated with demolition and disposal costs relating to concrete, masonry, steel, timber, and other materials associated with surface coal mining and reclamation operations.

(5) Operations on previously mined areas, as defined in 405 KAR 8:001, Section 1(86), shall be bonded at rate of $2,000 per acre and each fraction thereof.

(6) All areas of surface coal mining and reclamation operations not otherwise addressed in paragraphs (1) through (5) of this section shall be bonded at the rate of $3,500 per acre and each fraction thereof.

(7) (a) For permits that have been identified as a producer of long-term treatment drainage, the cabinet shall calculate an additional bond amount based on the estimated annual treatment cost, provided by the permittee and verified by the cabinet, multiplied by twenty years.

(b) The cost estimate is subject to verification and acceptance by the cabinet. The department shall use its own estimate for annual treatment costs if the department cannot verify the accuracy of the permittee's estimate.

(c) In lieu of this calculation, the permittee may submit a remediation plan to be approved by the cabinet for the areas deemed to be producing substandard drainage. The remediation plan shall demonstrate that substandard discharge will be permanently abated by land reclamation techniques prior to phase II bond release. If department rejects the plan, the permittee shall submit the additional acid mine drainage bond previously described in this section.

Section 9. Period of Liability. (1) Liability under performance bond applicable to an entire permit area or increment thereof shall continue until all reclamation, restoration and abatement work required of persons who conduct surface coal mining and reclamation operations under requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24 and the provisions of the permit have been completed, and the permit or increment terminated by release of the permittee from any further liability in accordance with 405 KAR 10:040.

(2) In addition to the period necessary to achieve compliance with all requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24 and the permit including the standards for the success of revegetation as required by 405 KAR 16:200 and 405 KAR 18:200, the period of liability under a performance bond shall continue for a period of five (5) years beginning with the last year of augmented seeding, fertilizing, irrigation or other work. The period of liability shall begin again whenever augmented seeding, fertilizing, irrigation or other work is required or conducted on the site prior to bond release. Isolated and clearly defined portions of a bonded area requiring extended liability because of augmentation may be separated from the original area and bonded separately upon approval by the cabinet. Such areas shall be limited in extent, and not constitute a scattered, intermittent, or checkerboard pattern of failure. Access to the separated areas for remedial work may be included in the area under extended liability if deemed

necessary by the cabinet.

(3) If the cabinet approves a long-term intensive agricultural postmining land use in accordance with 405 KAR 16:210, augmented seeding, fertilization, irrigation or other husbandry practices normally associated with the approved postmining land use shall not require restarting the five (5) year period of liability.

(4) The bond liability of the permittee shall include only those actions which the permittee is required to take under the permit, including completion of the reclamation plan in such a manner that the land will be capable of supporting a postmining land use approved under 405 KAR 16:210. Actions of third parties which are beyond the control and influence of the permittee and for which the permittee is not responsible under the permit shall not be covered by the bond.

Section 10. Adjustment of Amount. (1) The amount of the performance bond liability applicable to a permit or increment shall be adjusted by the cabinet:

(a) When the acreage in the permit area or increment is either increased or decreased; or

(b) When the cabinet determines that the cost of future reclamation, restoration or abatement work has changed. When it is determined that an adjustment under this paragraph is necessary, the cabinet shall:

1. Notify the permittee, the surety, and any person with a property interest in collateral who has previously requested such notification in writing; and

2. Provide the permittee an opportunity for an informal conference on the adjustment. The requirements of 405 KAR 7:091 and 405 KAR 7:092 shall not apply to the conduct of the conference.

(2) The amount of the performance bond liability applicable to a permit or increment may be adjusted by the cabinet upon application by the permittee under 405 KAR 8:010, Section 20, to delete acreage from the permit area or increment thereof where such acreage has not been affected by the surface coal mining and reclamation operation. The provisions of 405 KAR 10:040, Section 2(3), shall apply. However, a reduction due to such deletion of acreage shall not constitute a bond release and shall not be subject to the procedures of 405 KAR 10:040, Section 1.

(3) The cabinet may grant reduction of the required performance bond amount if the permittee's method of operation or other circumstances will reduce the maximum estimated cost to the cabinet to complete the reclamation responsibilities and therefore warrant a reduction of the bond amount. The request shall not be considered as a request for partial bond release subject to the procedures of 405 KAR 10:040, Section 1.

(4) The cabinet shall refuse to approve any reduction of the performance bond liability amount if an action for revocation or suspension of the permit covered by the bond is pending, if there is a pending action for forfeiture of the bond, or if the permittee is currently in violation of 405 KAR Chapters 7 through 24 on that permit or increment.

Section 11. Supplemental Assurance. (1) If alternative distance limits or additional pits are approved under 405 KAR 16:020, Section 2, the applicant shall submit to the cabinet supplemental assurance in the amount set forth in this section. This supplemental assurance shall be for the purpose of assuring the reclamation of the additional unreclaimed disturbed area and shall be in addition to the performance bond required under 405 KAR Chapter 10. The applicant shall submit supplemental assurance on the cabinet form, Supplemental Assurance, SME-42 (SA), July 1994. This form shall be accompanied by the Escrow Agreement form (for use with Supplemental Assurance form only), SME-64 (SA), July 1994.

(a) The supplemental assurance shall not be subject to the bond release requirements of 405 KAR 10:040, but shall be returned in accordance with the requirements of this section.

(b) However, the requirements of Sections 2, 3, and 5 of this administrative regulation, 405 KAR 10:035, and 405 KAR 10:050 shall apply to supplemental assurance.

(2) Single seam contour mining. For single seam contour operations subject to 405 KAR 16:020, Section 2(3), the amount required shall be $150,000 per 1,500 feet, or any portion thereof, of additional distance approved for the first pit under 405 KAR 16:020, Section 2(3). If an additional pit or pits are approved, the amount shall be $150,000 per 1,500 feet, or any portion thereof, including the first 1,500 feet of each additional pit.

(3) Multiple seam contour mining. For multiple seam contour mining operations subject to of 405 KAR 16:020, Section 2(4), the amount required shall be $150,000 per 1,500 feet, or any portion thereof, of additional distance approved for the first multiple seam operation under of 405 KAR 16:020, Section 2(4). If any additional multiple seam operations are approved, the amount shall be $150,000 per 1,500 feet, or any portion thereof, including the first 1,500 feet of each additional multiple seam operation.

(4) Mountaintop removal. If a mountaintop removal operation begins by mining a contour cut around all or a portion of the mountaintop, that contour portion shall require the same supplemental assurance set forth in subsection (2) of this section.

(5) Area mining. The amount required shall be $150,000 for any four (4) spoil ridges, or any portion thereof, of additional distance approved for the first pit under 405 KAR 16:020, Section 2(1). If an additional pit or pits are approved, the amount shall be $150,000 for any four (4) spoil ridges, or any portion thereof, including the first four (4) spoil ridges of each additional pit.

(6) Return of supplemental assurance. Supplemental assurance shall be returned to the person that submitted it upon:

(a) Application to the cabinet for the return; and

(b) Inspection and written documentation (including photographs) by the cabinet verifying that the area for which the supplemental assurance was submitted has been backfilled and graded (or in the case of mountaintop removal, the associated highwall has been eliminated by mining operations).

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Performance Bond, Form SME-42", June 1999;

(b) "Irrevocable Standby Letter of Credit, Form SME-72", July 1994;

(c) "Confirmation of Irrevocable Standby Letter of Credit, Form SME-72-A", July 1994;

(d) "Supplemental Assurance, SME-42 (SA)", July 1994;

(e) "Escrow Agreement (for use with Supplemental Assurance form only), SME-64 (SA)", July 1994;

(f) "Escrow Agreement, Form SME-64", October 2008;

(g) "Remining Issues and Procedures, Reclamation Advisory Memorandum No. 154", May 2012; and

(h) "Performance Bond for Surface Coal Mining and Reclamation on Federal Lands, Form SME-42-F", June 1999.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Natural Resources, 2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: May 4, 2012

FILED WITH LRC: May 4, 2012 at 2 p.m.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, #2 Hudson Hollow, Frankfort, Kentucky 40601, phone (502) 564-6940, fax (502) 564-5698, email Michael.Mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation specifies criteria for the base determination of bond amounts and requires certain periods of liability during which the bonds shall remain in effect. This administrative regulation also establishes requirements for filing and maintaining performance bonds, and provides for adjustments in bond amounts and additional information related to minimum bonds and application of bonds to ensure performance of the requirements of KRS Chapter 350 in the event work must be performed by the Cabinet, taking into consideration such things as topography, geology, future land use and the difficulty of reclamation.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide essential information on

bonding mine sites in the event work must be performed by the cabinet.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 350.064 requires an applicant to file with the cabinet a reclamation bond for performance payable, as appropriate, to the state, and conditional upon faithful performance of all the requirements of this chapter and the permit. This administrative regulation provides essential details for this process.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by establishing the procedures for bonding and supplemental assurance.

(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: NA

(b) The necessity of the amendment to this administrative regulation: NA

(c) How the amendment conforms to the content of the authorizing statutes: NA

(d) How the amendment will assist in the effective administration of the statutes: NA

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact all surface coal mine permit holders. There are approximately 1844 total permits currently under bond.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This new administrative regulation will increase minimum bond amounts that entities will be required to comply with as part of providing a reclamation bond.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Each permit that is issued by the department will vary depending on the features and facilities contained in the permit. The most accurate way to represent this information is to give the percentage increase in the bonding amounts captured in this administrative regulation.

Facilities	Previous Amount	Proposed Amount	Percent Increase
Access Roads	$1000/acre	$2500/acre	150%
Sediment Structures	$1500/perm.pond ; $5000/temp.	$10,000/acre, minimum	100%
Refuse Disposal Areas	$2500/acre, plus site factors= $3500 average	$7500/acre, plus site factors= $9000 average	157%
Remining Areas	$1500/acre, plus site factors= $2500 average	$2000/acre, plus site factors= $3000 average	20%
All Other Mining Areas	$2500/acre, plus site factors= $3500 average	$3500/acre, plus site factors= $4500 average	29%
Supplemental Assurance	$50,000/1,500 ft, or additional pit	$150,000/1,500 ft, or additional pit	200%
Minimum Bond	$10,000/ permit	$75,000/permit or increment	650%

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will be supplying bonds that are more closely related to the actual costs of reclamation in case the cabinet is required to perform reclamation activities on their behalf.

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

(a) Initially: This new administrative regulation will not increase costs to the administrative body. Most of the elements in this administrative regulation are currently being performed because most of the elements are being moved from other administrative regulations within Chapter 10 into this one bonding administrative regulation. Therefore there are few additional duties.

(b) On a continuing basis: There will be no continuing costs to the agency.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General fund and federal fund dollars will be used to fund this 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: There will not be a need to increase fees or funding to administer this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation will not increase nor does it establish any fees.

(9) TIERING: Is tiering applied? Yes. Bonding on permits will be tiered depending on the facilities and features permitted.

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 of Mine Permits and Division of Mine Reclamation and Enforcement.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.060, 350.062, 350.064, 350.093, 350.095, 350.100, 350.110, 350.151, 350.465

4. Estimate the effect of this administrative regulation on the expenditures and revenues 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 new administrative regulation will not generate any funds for use by the cabinet.

(b) How 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 new administrative regulation will not generate any funds for use by the cabinet on a continuing basis.

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

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

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: NA

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. Part 730

2. State Compliance Standards. KRS 350.064 and 405 KAR 10:015.

3. Minimum or uniform standards contained in the federal mandate. 30 C.F.R. 800.11 – 800.30

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. The Kentucky bonding program has additional requirements not addressed by regulations promulgated by the federal Office of Surface Mining, Reclamation, and Enforcement. The additional/different requirements are neces-

sary to adequately bond surface mining site disturbances.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The Commonwealth's bonds for surface mine disturbances are inadequate and the cabinet has implemented additional/different standards in order to adequately bond these disturbances pursuant to KRS 350.064.

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARRS, May 8, 2012)

11 KAR 4:080. Student aid applications.

RELATES TO: KRS 164.518, 164.744(2), 164.748(4), (7), (8), 164.753(3), (4), (6), 164.7535, 164.769, 164.780, 164.785, 164.7890, 34 C.F.R. 654.1-654.5, 654.30-654.52, 20 U.S.C. 1070d-31 - 1070d-41

STATUTORY AUTHORITY: KRS 164.518(3), 164.746(6), 164.748(4), 164.753(3), (6), 164.7535, 164.769(5), (6)(f), 34 C.F.R. 654.30, 654.41, 20 U.S.C. 1070d-37, 1070d-38

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) authorizes the Authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.7891. This administrative regulation designates and incorporates the applications to be utilized under the grant, scholarship, and work-study programs administered by KHEAA.

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

(1) For the KHEAA Grant Program as set forth in 11 KAR 5:130, the 2012-2013[~~2010-2011~~] Free Application for Federal Student Aid (FAFSA);

(2) For the KHEAA Work-Study Program as set forth in 11 KAR 6:010, the KHEAA Work-Study Program Student Application;

(3) For the Teacher Scholarship Program as set forth in 11 KAR 8:030, the Teacher Scholarship Application;

(4) For the Early Childhood Development Scholarship Program as set forth in 11 KAR 16:010:

(a) The 2012-2013[~~2010-2011~~] Free Application for Federal Student Aid (FAFSA); **and**

(b) The Early Childhood Development Scholarship Application;

(5) For the Robert C. Byrd Honors Scholarship Program as set forth in 11 KAR 18:010:

(a) For high school and home school students, the Robert C. Byrd Honors Scholarship Program; and

(b) For GED recipients, the Robert C. Byrd Honors Scholarship Program GED Recipients;

(6) For the Go Higher Grant Program as set forth in 11 KAR 5:200;

(a) The 2012-2013[~~2010-2011~~] Free Application for Federal Student Aid (FAFSA)[~~(FASFA)~~]; and

(b) The Go Higher Grant Program Application; and

(7) For the Coal County Scholarship Program for Pharmacy Students as set forth in 11 KAR 19:010, the Coal County Scholarship Program for Pharmacy Students Application.

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

(a) The "Free Application for Federal Student Aid July 1, 2012 – June 30, 2013" (FAFSA)[~~"2010-2011 Free Application for Federal Student Aid) (FAFSA)"~~], December 2011[~~2009~~];

(b) The "KHEAA Work-Study Program Student Application", July 2001;

(c) The "Teacher Scholarship Application", June 2006;

(d) The "Early Childhood Development Scholarship Application", April 2006;

(e) The "Robert C. Byrd Honors Scholarship Program", June 2009;

(f) The "Robert C. Byrd Honors Scholarship Program-GED Recipients", June 2009;

(g) The "Go Higher Grant Program Application", January 2008; and

(h) The "Coal County Scholarship Program for Pharmacy Students Application", February 2011.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Higher Education Assistance Authority, 100 Airport Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The material may also be obtained at www.kheaa.com.

KRISTI P. NELSON, Chair

APPROVED BY AGENCY: January 26, 2012

FILED WITH LRC: February 14, 2012 at 3 p.m.

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.

EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended at ARRS, May 8, 2012)

16 KAR 4:030. Out-of-state educator preparation.

RELATES TO: KRS 161.020, 161.028, 161.030, 161.124, 161.126

STATUTORY AUTHORITY: KRS 161.020, 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 and 161.030 require that a teacher and other professional school personnel hold a certificate of legal qualifications for the respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board. KRS 161.028 requires the Education Professional Standards Board to establish the standards for obtaining and maintaining a teaching certificate.**[**~~KRS 161.124 enacts into law the Interstate Agreement on Qualifications of Educational Personnel. KRS 161.126 designates the Executive Director of the Education Professional Standards Board as the state official responsible for signing contracts under this agreement.~~**]**This administrative regulation establishes the certification provisions for applicants with out-of-state **educator** preparation.

Section 1. (1) An applicant for Kentucky teacher or administrative certification whose professional preparation was completed at an educator preparation[~~a teacher education~~] institution located outside the Commonwealth of Kentucky shall have completed a program of preparation and the curriculum requirements approved by the responsible state education agency for teacher or administrative certification.

Section 2**.[:]** Teacher Certification. (1) An applicant for Kentucky teacher certification whose professional preparation was completed at an educator preparation institution located outside the Commonwealth of Kentucky[~~(2) An out-of-state applicant who meets the requirements of subsection (1) of this section~~] shall:

(a) Possess a teacher license or certificate equivalent to the Kentucky statement of eligibility from the state, territory, or province where the applicant completed his or her preparation program;

(b) Satisfy the degree, academic preparation, and grade point requirements **established** in 16 KAR 2:010;

(c) Provide evidence that the out-of-state license or certificate was obtained by completion of an approved educator preparation program and not based on the completion of a written or verbal assessment; and

(d) Follow the procedures for certificate application established in 16 KAR 2:010.

(2) An applicant for Kentucky teacher certification whose pro-

fessional preparation was completed at an educator preparation institution located outside the Commonwealth of Kentucky **and** who meets the requirements of Section 1 **of this administrative regulation** and subsection (1) of this section shall be issued a Kentucky teaching certificate or statement of eligibility established in 16 KAR 2:010 at the grade range and content area corresponding to the out-of-state preparation.[~~(3) An out-of-state applicant shall follow the procedures for application established in 16 KAR 2:010.~~]

Section **3.[**~~2.~~**]** Administrative Certification. (1) An applicant for Kentucky administrative certification whose professional preparation was completed at an educator preparation institution located outside the Commonwealth of Kentucky shall:

(a) Possess an administrative license or certificate equivalent to the Kentucky corresponding statement of eligibility or administrative certificate from the state, territory, or province where the applicant completed his or her preparation program;

(b) Satisfy the degree, academic preparation, and grade point requirements for the administrative certificate **established** in 16 KAR Chapter 3;

(c) Provide evidence that the out-of-state license or certificate was obtained by completion of an approved educator preparation program consisting of a minimum of thirty (30) post Masters' graduate-level hours in school administration; and

(d) Follow the procedures for certificate application established in 16 KAR Chapter 3.

(2) An applicant for Kentucky administrative certification whose professional preparation was completed at an educator preparation institution located outside the Commonwealth of Kentucky **and** who meets the requirements of Section 1 **of this administrative regulation** and subsection (1) of this section shall be issued a Kentucky administrative certificate or statement of eligibility established in 16 KAR Chapter 3 corresponding to the out-of-state preparation.

(3) An applicant for Kentucky principal certification who was admitted to a principal preparation program located outside the Commonwealth of Kentucky prior to January 1, 2012 and who completes the program prior to January 31, 2014 shall be exempt from subsection (1)(c) of this section.

Section 4**.[**~~:~~**]** (1) An out-of-state applicant shall be subject to the testing and internship requirements of KRS Chapter 161[~~161.030~~] and implementing administrative regulations of the Education Professional Standard Board in KAR Title 16.

(2) An out-of-state applicant shall be subject to the certificate issuance, recency, reissuance, renewal, and rank change provisions of KRS Chapter 161 and KAR Title 16.

CATHY GUNN, Chairperson

APPROVED BY AGENCY: March 5, 2012

FILED WITH LRC: March 7, 2012 at 3 p.m.

CONTACT PERSON: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

PERSONNEL CABINET
(As Amended at ARRS, May 8, 2012)

101 KAR 2:140. Workers' Compensation Fund and Program.

RELATES TO: KRS 18A.110(7)(i), 18A.370, 18A.375, 18A.380, 342.640

STATUTORY AUTHORITY: KRS 18A.030(2)(i), 18A.110(7)(i), 18A.380

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(7)(i) requires the Secretary of Personnel to promulgate administrative regulations to implement programs to provide for the safety, health and welfare of state employees. KRS 18A.380 requires the cabinet to promulgate administrative regulations for the administration of the state employee workers' compensation fund established by KRS 18A.375. This administrative regulation establishes requirements for the workers' compensation fund and program for state employees.

Section 1. Workers'[~~Workers~~] Compensation Fund. The self-insured workers' compensation fund and program established by KRS 18A.375(1) shall cover all eligible employees.

Section 2. Eligibles. (1) A state employee, as defined by KRS 18A.370, shall be eligible to participate in the program.

(2) Other state related groups shall be included upon written agreement with the Personnel Cabinet.

Section 3. Assessments. The assessment for an individual agency shall be based on the claims history for the past three (3) years and on the number of employees in the agency. Premiums shall be assessed at the beginning of each fiscal year.

(1) A biennial actuarial study shall be carried out to insure the fund's fiscal soundness.

(2) A fund deficit shall be recouped through an interim billing or additional assessment if deemed necessary by an actuarial study.

Section 4. Benefits. (1)(a) The required medical expense for a service rendered by a hospital or doctor, or for a prescribed medication, shall be paid subject to approval of the claim.

(b) A percentage of the employee's average weekly wage shall be paid if **the employee[**~~he~~**]** is unable to work for an extended period due to a job-related injury or illness.

(c)1. Except as provided in subparagraph 2 of this paragraph, compensation shall not be payable for the first seven (7) days of disability.

2. If the disability continues over two (2) weeks, compensation shall be allowed from the first day of disability.

(2)**(a)** For an absence due to illness or injury for which workers' compensation benefits are received, if the employee elects to accept the workers' compensation benefits, accumulated[~~sick~~] leave may be used in order to maintain regular full salary.

(b) An employee electing to utilize accumulated leave shall complete and submit a Workers' Compensation Request to Use Accumulated Leave**,** Form WCF-2**,** to the employee's **personnel unit.**

(c)[~~supervisor.~~**]** If paid accumulated[~~sick~~] leave is used, workers' compensation **income[**~~pay~~**]** benefits shall be remitted to the employee's agency[~~assigned back to the state~~] for whatever period of time an employee received paid [~~sick~~] leave.

(d) An employee shall not receive **and retain the benefit of** paid[~~sick~~] leave and workers' compensation **income benefits[**~~pay~~**]** for the same period of time.

(e) The employee's accumulated leave shall be reinstated to the employee's leave balance to the extent that workers' compensation benefits are remitted to the employee's agency.[~~(3) An employee's total compensation, by workers' compensation benefits, unemployment insurance benefits, use of accrued leave, or otherwise, shall not exceed 100 percent of the employee's regular salary.~~**]**

Section 5. Notification Procedures. (1) Employee requirements. An employee shall inform the supervisor of an injury **or illness** as soon as physically able to do so.

(2) Supervisor requirements.

(a) The supervisor shall:

1. Complete the employer's First Report of Injury **or Illness**, **Form** IA-1, **which is incorporated by reference in 803 KAR 25:170. The supervisor shall give specific information about the injury or illness on the form[**~~giving specific information about the injury~~**]**; and

2. Submit the form to the designated office in the agency within three (3) working days after the supervisor is notified of an injury **or illness** to insure timely payments to the**[**~~injured~~**]** employee.

(b) A Lost Time and Return to Work Form, **Form** WCF-1, shall be submitted by the **employee's supervisor or personnel representative[**~~employee or the employee's representative to the supervisor~~**]** if an employee is losing time from work due to a work-related injury **or illness**. The supervisor **or personnel representa-**

tive shall notify **the employee's**[~~his~~**]** personnel unit when **the**[~~an~~**]** employee returns**. The personnel unit shall submit Form WCF-1[**~~so that a WCF-1 form shall be submitted~~**]** to the Personnel Cabinet.

(c) Each medical bill, or medical information regarding treatment of a job-related injury or illness of the employee, shall be submitted in the same manner as an injury report. An injury report shall be submitted[~~forwarded~~] as soon as possible.

(d) A safety representative in each agency shall be notified of each accident so that the representative may review accident causes and provide safety training. A supervisor shall promote safety with employees.

Section 6. Recordkeeping. All records maintained by the Personnel Cabinet and by an agency with respect to an employee claim under this administrative regulation shall be confidentially maintained.

Section 7. Agency Withdrawal and Readmission to Program. (1) If an agency included in the fund as a result of the employment of persons defined in KRS 18A.370 desires to withdraw from the program, the agency shall provide the Personnel Cabinet with written notice of its intent to withdraw no later than thirty (30) calendar days prior to the end of the current fiscal year. If the notice is timely submitted, the agency may elect to withdraw at the end of the current fiscal year.

(2) An agency which withdraws from the program may be readmitted to the program at the discretion of the Personnel Cabinet, based on compliance with the provisions in subsections (3), (4), and (5) of this section.

(3) As a condition of withdrawal, the agency shall reimburse the Commonwealth for all claims incurred by its employees, but not reported to the fund prior to the effective date of withdrawal, without regard to the length of time after the withdrawal date that the claims are actually received by the Personnel Cabinet.

(a) The Commonwealth shall bill the agency on a quarterly basis for the cost of claims that were incurred but not reported as of the date of withdrawal until all claims have been submitted and processed**.[**~~; and~~**]**

(b) The agency shall reimburse the Commonwealth within thirty (30) calendar days of receipt of the itemized statement of payments made on the agency's behalf.

(4) If an agency that has withdrawn from the program desires to seek readmission to the fund, the Personnel Cabinet may restore the agency to the fund upon review and evaluation of the agency's claims and payment history.

(5) If the Personnel Cabinet approves the agency's restoration to the fund, the Personnel Cabinet shall assess a premium based on:

(a) Claims experience over the preceding three (3) years; and

(b) The current number of employees in the agency.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) **[**~~First Report of Injury Form IA-1, February 1995; and~~

~~(b)~~**] "**Lost Time and Return to Work Form**", Form WCF-1, May 2012; and**

(b)[~~WCF-1, November 2011~~**]**[~~1995~~]**[**~~.~~

~~(c)~~**] "**Workers' Compensation Request to Use Accumulated Leave**",** Form WCF-2, **May 2012[**~~November 2011~~**].**

(2) This material may be inspected, copied, or obtained**, subject to applicable copyright law,** at the Personnel Cabinet, 501 High Street, 3rd Floor[~~200 Fair Oaks Lane, 5th Floor~~], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

TIM LONGMEYER, Secretary

APPROVED BY AGENCY: November 15, 2011

FILED WITH LRC: November 15, 2011 at 11 a.m.

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

GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, May 8, 2012)

201 KAR 20:490. Licensed practical nurse intravenous therapy scope of practice.

RELATES TO: KRS 314.011(10)(a), (c)

STATUTORY AUTHORITY: KRS 314.011(10)(c), 314.131(1), 314.011(10)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations as may be necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.011(10)(c) authorizes the board to promulgate an administrative regulation to establish the scope of practice for administering medicine or treatment by a licensed practical nurse. KRS 314.011(10)(a) requires that licensed practical nurses practice under the direction of a registered nurse, physician, or dentist. This administrative regulation establishes the scope of that practice as it relates to intravenous therapy.

Section 1. Definitions. (1) "Administration" means to initiate and infuse intravenous therapy.

(2) "Antineoplastic agent" means a medication that prevents the development, growth, or proliferation of malignant cells.

(3) "Bolus" means a concentrated medication or solution given rapidly over a short period of time.

(4) "Central venous access device" means a device that permits access to the central vascular system and is inserted with the tip residing in the lower one-third of the superior vena cava or above the level of the diaphragm in the inferior vena cava[~~catheter that is inserted in such a manner that the distal tip is located in the superior vena cava, inferior vena cava, or heart, including a peripherally-inserted central catheter and an implanted port~~].

(5) "Direction" means a communication of a plan of care that is based upon assessment of a patient by an advanced practice registered nurse, a registered nurse, physician, or dentist that establishes the parameters for the provision of care or for the performance of a procedure.

(6) "Discontinuance" means to stop the infusion of the medication or fluid and does not include removal of the intravenous access device.

(7) "Fibrinolytic agent" means a pharmaceutical agent capable of dissolving blood clots.

(8) "Intravenous access device" means either a peripheral access device or a central venous access device.

(9) "Mix" or "mixing" means to combine two (2) or more medications or solutions, and includes reconstituting a powder into a liquid, and diluting a medication or solution.

(10) "Moderate sedation" means the administration of intravenous medications to produce a state that intentionally results in a depressed level of consciousness in a patient.

(11) "Peripheral access device" means a peripherally-inserted intravenous catheter or needle that is less than or equal to three (3) inches in length.

(12) "Pharmacology" means information on the classification of intravenous drugs, indications for use, pharmacological properties, monitoring parameters, contraindications, dosing, clinical mathematics, anticipated side effects, potential complications, antidotal therapy, compatibilities, stabilities, specific considerations for select intravenous drugs, and administration of intravenous medications to pediatric, adult, and geriatric populations.

(13) "Procedural sedation" means the administration of intravenous medications to produce a state that allows a patient to tolerate unpleasant procedures and results in a depressed level of consciousness.

(14) "Push" means administration of medication under pressure via a syringe.

(15) "Supervision" means the provision of guidance by a registered nurse, advanced practice registered nurse, physician or dentist for the accomplishment of a nursing task with periodic observation and evaluation of the performance of the task including validation that the nursing task has been performed in a safe manner.

(16) "Supervisor" means the registered nurse, advanced practice registered nurse, physician or dentist who provides supervision of the licensed practical nurse's practice as defined in subsection (15) of this section.

(17) "Therapeutic phlebotomy" means a clinical procedure whereby blood volume is reduced to achieve a therapeutic outcome.

(18) "Titration" means adjustment of a medication dosage or rate of solution infusion as prescribed within a therapeutic range that is based on the assessment of a patient.

(19) "Vesicant" means an agent capable of causing injury if it escapes from the intended vascular pathway into surrounding tissue.

Section 2. Education and Training Standards. (1) Prior to performing intravenous (IV) therapy, the licensed practical nurse (LPN) shall have completed education and training related to the scope of IV therapy for an LPN. This education and training shall be obtained through:

(a) A prelicensure program of nursing for individuals admitted to the program after September 15, 2004; or

(b) An institution, practice setting, or continuing education provider that has in place a written instructional program and a competency validation mechanism that includes a process for evaluation and documentation of an LPN's demonstration of the knowledge, skills, and abilities related to the safe administration of IV therapy. The LPN shall receive and maintain written documentation of completion of the instructional program and competency validation.

(2) The education and training programs recognized in subsection (1) of this section shall be based on "Policies and Procedures for Infusion Nursing" and "Infusion Nursing: Standards of Practice" and shall include the following components:

(a) Technology and clinical applications;

(b) Fluid and electrolyte balance;

(c) Pharmacology and vesicants;

(d) Infection control;

(e) Transfusion therapy;

(f) Parenteral nutrition; and

(g) Legal aspects based on KRS Chapter 314 and this administrative regulation.

Section 3. Supervision Requirements. (1) An LPN performing IV therapy procedures shall be under the direction and supervision of a registered nurse (RN), advanced practice registered nurse (APRN), physician, or dentist.

(2) For a patient whose condition is determined by the LPN's supervisor to be stable and predictable, and rapid change is not anticipated, the supervisor may provide supervision of the LPN's provision of IV therapy without being physically present in the immediate vicinity of the LPN, but shall be readily available.

(3) In the following cases, for the LPN to provide IV therapy, the LPN's supervisor shall be physically present in the immediate vicinity of the LPN and immediately available to intervene in the care of the patient:

(a) If a patient's condition is or becomes critical, fluctuating, unstable, or unpredictable;

(b) If IV medications or fluids are administered by push or bolus administration, except for saline or heparinized saline [~~heparin~~] to maintain patency of an IV access device;

(c) If a patient has developed signs and symptoms of an IV catheter-related infection, venous thrombosis, or central line catheter occlusion;

(d) If a patient is receiving blood, blood components, or plasma volume expanders; or

(e) If a patient is receiving peritoneal dialysis or hemodialysis.

Section 4. Standards of Practice. (1) An LPN shall perform only those IV therapy acts for which the LPN possesses the knowledge, skill, and ability to perform in a safe manner, except as limited by Section 6 of this administrative regulation and under supervision as required by Section 3 of this administrative regulation.

(2) An LPN shall consult with an RN or physician, physician assistant, dentist, or advanced practice registered nurse and seek guidance as needed if:

(a) The patient's care needs exceed the licensed practical nursing scope of practice;

(b) The patient's care needs surpass the LPN's knowledge, skill, or ability; or

(c) The patient's condition becomes unstable or imminent assistance is needed.

(3) An LPN shall obtain instruction and supervision as necessary if implementing new or unfamiliar nursing practices or procedures.

(4) An LPN shall follow the written, established policies and procedures of the facility that are consistent with KRS Chapter 314.

Section 5. Functions That May Be Performed. An LPN who has met the education and training requirements of Section 2 of this administrative regulation may perform the following IV therapy functions, except as limited by Section 6 of this administrative regulation and under supervision as required by Section 3 of this administrative regulation:

(1) Calculation and adjustment of the flow rate on all IV infusions;

(2) Observation and reporting of subjective and objective signs of adverse reactions to any IV administration and initiate appropriate interventions;

(3) For all IV access devices:

(a) Administration of IV fluids and medications via central venous and peripheral access devices as permitted by this section and not prohibited by Section 6 of this administrative regulation;

(b) Performance of site care and maintenance that includes:

1. Monitor access site and infusion equipment;

2. Change administration set, including add-on device and tubing;

3. Flushing; and

4. Change site dressing;

(c) Discontinuance of a medication or fluid infusion; and

(d) Conversion of a continuous infusion to an intermittent infusion;

(4) Insertion or removal of a peripheral access device;

(5) Administration, monitoring, and discontinuance of blood, blood components, and plasma volume expanders;

(6) Administration of IV medications and fluids that are mixed and labeled by an RN, APRN, physician, dentist, or pharmacist or are commercially prepared;

(7) Mixing and administration via push or bolus route of any of the following classifications of medications:

(a) Analgesics;

(b) Antiemetics;

(c) The antagonistic agents for analgesics;

(d) Diuretics;

(e) Corticosteroids; and

(f) Saline, heparinized saline, or Heplock solution [~~or heparin~~] to maintain patency of an IV access device;

(8) Administration of glucose to patients fourteen (14) years of age or older via direct push or bolus route;

(9) Administration, monitoring, and discontinuance of IV medications and fluids given via a patient controlled administration system;

(10) Administration, monitoring, and discontinuance of parenteral nutrition and fat emulsion solutions;

(11) Performance of dialysis treatment, including:

(a) Administering Heparin 1:1000 units or less concentration either to prime the pump, initiate treatment, or for administration throughout the treatment, in an amount prescribed by a physician, physician's assistant, or advanced practice registered nurse. The licensed practical nurse shall not administer Heparin in concentrations greater than 1:1000; and

(b) Administering normal saline via the dialysis machine to correct dialysis-induced hypotension based on the facility's medical protocol. Amounts beyond that established in the facility's medical protocol shall not be administered without direction from a registered nurse or a physician;

(12) Collection of blood specimens from a peripheral IV access device only at the time of initial insertion;

(13) Removal of a noncoring needle from an implanted venous

port;

(14) Titration of intravenous analgesic medications for hospice patients;

(15) Administration of peripheral intravenous medications via a volumetric control device;

(16) Administration of intravenous medications or solutions via a ready-to-mix intravenous solution infusion system; [~~and~~]

(17) Aspiration of a central venous catheter to confirm patency via positive blood return; and

(18) Administration of medications or fluids via:

(a) Peripherally inserted central catheters; or

(b) Implanted or tunneled central venous catheters.

Section 6. Functions that Shall Not be Performed. An LPN shall not perform the following IV therapy functions:

(1) Administration of tissue plasminogen activators, immunoglobulins, antineoplastic agents, or investigational drugs;

(2) Accessing of a central venous access device used for hemodynamic monitoring;

(3) Administration of medications or fluids via arterial lines or implanted arterial ports;

(4) Administration of medications via push or bolus route except as permitted by Section 5(7) or (8) of this administrative regulation;

(5) Administration of a fibrinolytic agent to declot any IV access device;

(6) Administration of medications requiring titration, except as permitted by Section 5(14) of this administrative regulation;

(7) Insertion or removal of any IV access device, except as permitted by Section 5(4) or (13) of this administrative regulation;

(8) Accessing or programming an implanted IV infusion pump;

(9) Administration of IV medications for the purpose of procedural sedation, moderate sedation, or anesthesia;

(10) Administration of fluids or medications via an epidural, intrathecal, intraosseous, or umbilical route, or via a ventricular reservoir;

(11) Administration of medications or fluids via an arteriovenous fistula or graft, except for dialysis;

(12) Performance of the repair of a central venous access device;

(13) Mixing of any medications other than those listed in Section 5(7) of this administrative regulation;

(14) Insertion of noncoring needles into an implanted port;

(15) Performance of therapeutic phlebotomy;

(16) Administration of medications or fluids via a[~~percutaneously or surgically inserted~~] nontunneled, nonimplanted central venous catheter;

(17) Aspiration of an arterial line;

(18) Withdrawal of blood specimens via a central venous catheter; or

(19) Initiation and removal of a peripherally inserted central, midclavicular, or midline catheter.

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

(a) "Policies and Procedures for Infusion Nursing", Fourth[~~Third~~] Edition**, [**~~(~~]2011[~~)~~]**; and**

(b)[~~(2006)~~]**[**~~, Infusion Nurses Society, is incorporated by reference.~~

~~(2)~~**]** "Infusion Nursing: Standards of Practice", **[**~~(~~]2011[~~)~~]**,**

(2)[~~, Infusion Nurses Society, is incorporated by reference.~~

~~(3)~~**]** This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

CAROL KOMARA, President

APPROVED BY AGENCY: February 10, 2012.

FILED WITH LRC: February 16, 2012 at 11 a.m.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 564-4251, email nathan.goldman@ky.gov.

GENERAL GOVERNMENT CABINET
Kentucky Board Of Social Work
(As Amended at ARRS, May 8, 2012)

201 KAR 23:015. Temporary permission to practice.

RELATES TO: KRS 335.080, 335.090, 335.100

STATUTORY AUTHORITY: KRS 335.070(1), (3), (9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.070(1) **requires[**~~authorizes~~**]** the board to evaluate and approve the qualifications of applicants for licensure. KRS 335.070(3) authorizes the board to promulgate administrative regulations. KRS 335.070(9) authorizes the board to establish requirements for temporary permits to practice social work. This administrative regulation establishes the requirements for the granting of temporary permission to engage in the practice of social work.

Section 1. (1) A temporary permit to engage in the practice of social work shall be granted, if requested, to an applicant who has completed all of the requirements for licensure except the examination and has applied for licensure under the provisions of KRS 335.080, 335.090, or 335.100.

(2) A person practicing under a temporary permit as a certified social worker shall not accumulate hours towards the supervision requirements of KRS 335.100(1)(b).

(3) Certified social workers and licensed clinical social workers practicing clinical social work under a temporary permit shall be under the supervision of a licensed clinical social worker, or equivalent.

(4) The request for a temporary permit shall be accompanied by a letter from the proposed supervisor acknowledging the responsibility for supervision and for the practice of the person holding the temporary permit.

(5) A licensee **shall[**~~may~~**]** not serve as the supervisor for more than two (2) persons holding a temporary permit at any one (1) time.

(6) Supervision during the period of temporary permission to practice shall be a minimum of one (1) hour of individual, face-to-face supervision per week.

(7) The temporary permit shall be valid until the applicant for licensure is issued or denied licensure under the provisions of KRS 335.080, 335.090, or 335.100, but the temporary permit shall not extend for more than 240[~~120~~] days after the applicant has applied for licensure.

(8) More than one (1) temporary permit shall not be granted for any applicant for licensure.

SHARON SANDERS, Chair

APPROVED BY AGENCY: March 5, 2012

FILED WITH LRC: March 15, 2012 at 11 a.m.

CONTACT PERSON: Margaret Hazlette, Executive Director, Kentucky Board of Social Work, 44 Fountain Place, Frankfort, Kentucky 40601, phone (502) 564-2350, fax (502) 696-8030.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Appraisers Board
(As Amended at ARRS, May 8, 2012)

201 KAR 30:050. Examination and experience requirement.

RELATES TO: KRS **324A.010,** 324A.035(1), (3), 324A.040(2), 12 U.S.C. 3331-3351

STATUTORY AUTHORITY: KRS 324A.020, 324A.035(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.035(1) requires the board to establish by administrative regulation requirements for certification or licensure of appraisers of real property in federally-related transactions. KRS 324A.035(3)(d), (e), and (f) require the board to establish by administrative regulations requirements for experience and examination of applicants. Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, 12 U.S.C. 3331-3351, establishes requirements for certification or licensure of appraisers of real property in federally-related transactions. This administrative regulation estab-

lishes the examination and experience requirements for appraisers of real property in federally-related transactions.

Section 1. Examination. (1) An applicant for certification as a certified general real property appraiser, certified residential real property appraiser, or licensed real property appraiser shall pass an examination specific for the certification or license applied for and approved by:

(a) The board; and

(b) The Appraiser Qualifications Board of the Appraisal Foundation.

(2) A score from an examination shall no longer be acceptable for licensure after two (2) years from the date on which the applicant takes and passes the examination.

(3) An applicant shall complete all the education and experience requirements for the credential which the individual is seeking prior to being approved to sit for the national appraisal examination.

(4)(a) An individual shall submit a complete Appraiser Licensure/Certification Application, incorporated by reference in 201 KAR 30:030, which documents the completed education and experience to the board prior to being approved to sit for the national appraisal examination.

(b) The applicant shall submit the following information with the application:

1. Proof of completion of the education required by 201 KAR 30:190;

2. Proof of completion of the required experience as specified in Section 2 of this administrative regulation including any reports identified by the board; and

3. The fee required by 201 KAR 30:060.

(5)(a) An applicant shall verify experience credit on the Appraiser Assignment Log.

(b) An applicant shall submit satisfactory reports, file memoranda, and other **reasonable** documentation **requested[**~~as required~~**]** by the board to confirm the applicant's appraisal experience.

Section 2. Required Experience. (1)(a) Prior to certification as a general real property appraiser, an applicant shall have acquired 3,000 hours of appraisal experience. This experience shall not be acquired in a period of fewer than thirty (30) calendar months.

(b) Prior to certification as a residential real property appraiser, an applicant shall have acquired 2,500 hours of appraisal experience. This experience shall not be acquired in a period of fewer than twenty-four (24) calendar months.

1. No more than fifty (50) percent of the residential experience shall be claimed for appraisal review or appraisal consulting assignments.

2. No more than fifty (50) percent of the residential experience shall be claimed for appraisal of vacant land.

3. At least fifty (50) percent of the residential experience claimed shall include development of the cost approach, sales comparison approach, and income approach.

4. No more than fifty (50) percent of the residential experience shall be claimed for restricted use appraisal reports.

(c) Prior to licensure as a licensed real property appraiser, an applicant shall have acquired 2,000 hours of appraisal experience. This experience shall not be acquired in a period of fewer than twenty-four (24) calendar months.

1. No more than fifty (50) percent of the residential experience shall be claimed for appraisal review or appraisal consulting assignments.

2. No more than fifty (50) percent of the residential experience shall be claimed for appraisal of vacant land.

3. At least fifty (50) percent of the residential experience claimed shall include development of the cost approach, sales comparison approach, and income approach.

4. No more than fifty (50) percent of the residential experience shall be claimed for restricted use appraisal reports.

(d) For certification as a general real property appraiser, at least 1,500 hours of appraisal experience shall consist of nonresidential appraisal experience.

1. No more than fifty (50) percent of the general[~~residential~~] experience shall be claimed for appraisal review or appraisal consulting assignments.

2. No more than fifty (50) percent of the general[~~residential~~] experience shall be claimed for appraisal of vacant land.

3. At least fifty (50) percent of the general[~~residential~~] experience claimed shall include development of the cost approach, sales comparison approach, and income approach.

4. No more than fifty (50) percent of the general[~~residential~~] experience shall be claimed for restricted use appraisal reports.

(e) The appraisal experience required by this section may have been acquired in any calendar years, whether or not the calendar years are consecutive. Hours may be treated as cumulative in order to achieve the necessary hours of appraisal experience.

(f) Real property appraisal assignments completed for experience credit shall be completed:

1. In compliance with the requirements of USPAP as incorporated in 201 KAR 30:040 and defined in KRS **324A.010(7)** **[**~~324.010(7)~~**]**;

2. Under the supervision of a certified residential real property appraiser for experience of one (1) to four (4) unit residential properties; and

3. Under the supervision of a certified general real property appraiser for experience of all property uses other than residential properties.

(g) To count towards the requirements of this section, the experience shall be acquired while the applicant is licensed or certified by the board as one (1) of the types of appraisers identified in 201 KAR 30:030 Section 1(2), (3), or (4).

(2) The requirements of USPAP shall not apply to the board, its agents, and employees when conducting an appraisal review for purposes of confirming an applicant's experience under this administrative regulation.

Section 3. Incorporation by Reference. (1) "Appraiser Assignment Log", 8/09, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Appraisers Board, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, (859) 623-1658, Monday through Friday, 8 a.m. to 4:30 p.m.

HAROLD BRANTLEY, Chair

APPROVED BY AGENCY: March 15, 2012

FILED WITH LRC: March 15, 2012 at 11 a.m.

CONTACT PERSON: Larry Disney, Executive Director, Kentucky Board of Real Estate Appraisers, 135 W. Irvine Street, Suite 301, Richmond, Kentucky 40475, phone (859) 623-1658; fax (859) 623-2598.

Tourism, Arts and Heritage Cabinet
Kentucky Department of Fish and Wildlife Resources
(As Amended at ARRS, May 8, 2012)

301 KAR 2:251. Hunting and trapping seasons and limits for furbearers.

RELATES TO: KRS 150.170, 150.180, 150.360, 150.370, 150.399, 150.400, 150.415, 150.416, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.175(7), (9),[~~KRS 150.025, 150.175,~~] 150.410

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits, to regulate any method of taking, and to make **those[**~~such~~**]** requirements apply to a limited area. KRS 175(7), (9)[~~KRS 150.025 authorizes the department to establish seasons for the taking of game and fish and to regulate bag and possession limits, the methods of taking and the devices used to take wildlife. KRS 150.175~~] authorizes the department to issue licenses, permits, and tags for hunting and trapping. KRS 150.410 authorizes the department to regulate trap tags, trap visitation, and trap placement to protect domestic animals. This administrative regulation establishes seasons, bag limits, and legal methods for hunting

and trapping furbearers.

Section 1. Definitions. (1) "Body-gripping trap" means a commercially manufactured spring-loaded trap designed to kill the animal upon capture.

(2) "Dry land set" means a trap that is not set to submerge an animal in water upon capture.

(3) "Foothold trap" means a commercially manufactured spring-loaded trap with smooth, metallic or rubber soft-catch jaws that close upon an animal's foot.

(4) "Furbearer" means mink, muskrat, beaver, raccoon, opossum, gray fox, red fox, least weasel, long-tailed weasel, river otter, bobcat, coyote, and striped skunk.

(5) "Hunter" means a person hunting furbearers with gun, gun and dog, bow and arrow, dog, or by falconry.

(6) "Otter Zone 1" means the following counties: Anderson, Ballard, Bath, Boone, Bourbon, Bracken, Breckinridge, Bullitt, Caldwell, Calloway, Campbell, Carlisle, Carroll, Christian, Crittenden, Daviess, Fayette, Fleming, Franklin, Fulton, Gallatin, Grant, Graves, Grayson, Hancock, Hardin, Harrison, Henderson, Henry, Hickman, Hopkins, Jefferson, Kenton, Larue, Livingston, Lyon, Marshall, Mason, McCracken, McLean, Meade, Muhlenberg, Nelson, Nicholas, Ohio, Oldham, Owen, Pendleton, Robertson, Rowan, Scott, Shelby, Spencer, Trigg, Trimble, Union, Webster, and Woodford.

(7) "Otter Zone 2" means all Kentucky counties not included in subsection **(6)[**~~6~~**]** of this section.

(8) "Snare" means a wire, cable, or string with a knot, loop, or a single piece closing device which is not power or spring assisted.

(9)[~~(7)~~] "Squaller" means a hand-operated, mouth-operated, or electronic call capable of mimicking the vocalizations of furbearers.

(10)[~~(8)~~] "Trap" means a body-gripping trap, box trap, deadfall, foothold trap, snare, or wire cage trap used to catch furbearers.

(11)[~~(9)~~] "Water set" means a trap set to submerge an animal in water upon capture.

(12)[~~(10)~~] "Youth" means a person who has not reached sixteen (16) years of age.

Section 2. Hunting Requirements. (1) Unless exempted by KRS 150.170, a person shall carry proof of purchase of a valid hunting license while hunting furbearers.

(2) Furbearers may be taken during daylight hours only, except for raccoon and opossum.

(3) Raccoon and opossum may be taken day or night, except that a person shall not take raccoons or opossums during daylight hours during the modern gun deer season, as established in 301 KAR 2:172.

(4) A hunter shall not use a light from a boat to take raccoon or opossum.

(5) A person shall not use the following while chasing raccoon or opossum from noon on March 1 through September 30;

(a) A firearm;

(b) Slingshot;

(c) Tree climber; or

(d)[~~(e)~~**]** Any device to kill, injure, or force a raccoon or opossum from a tree or den.

(6) A person may use a squaller year-round.

(7) There shall not be a closed season on:

(a) Chasing red and gray foxes during daylight hours for sport and not to kill; and

(b) Chasing raccoons or opossums for sport and not to kill.

(8) A hunter may use a hand or mouth-operated call, electronic call, or any other attracting device during a furbearer hunting season.

Section 3. Trapping Requirements. (1) Unless exempted by KRS 150.170, a person shall carry proof of purchase of a valid trapping license while trapping.

(2) A person who is trapping on dry land shall not:

(a) Set traps closer than ten (10) feet apart; or

(b) Use any trap except for the following:

1. Deadfall;

2. Wire cage or box trap;

3. Foothold trap with a maximum inside jaw spread of six (6) inches measured perpendicular to the hinges;

4. Body-gripping trap with a maximum inside jaw spread of seven and one-half (7.5) inches measured parallel with the trigger; or

5. A snare.

(3) There shall be no restrictions on the size or type of trap used as a water set.

(4) A trap shall not be set in a trail or path commonly used by a human or a domestic animal.

(5) A trapper may use lights from a boat or a vehicle.

Section 4. Trap Tags. (1) Each trap shall have a metal tag attached to it that clearly shows one (1) of the following:

(a) The name and address of the person setting, using, or maintaining the trap; or

(b) A wildlife identification number issued by the department and the 1-800-25ALERT department hotline phone number.

(2) A person may apply for a wildlife identification number by:

(a) Accessing the department's website at fw.ky.gov; or

(b) Calling the department's information center at 1-800-858-1549.

(3) The following information shall be required for a person to apply for a wildlife identification number:

(a) Name;

(b) Current home address;

(c) Social Security number;

(d) Current phone number;

(e) Date of birth; and

(f) Driver's license number, if available.

(4) A person shall:

(a) Not use a trap tag that has an inaccurate or outdated address;

(b) Not use a trap tag that has a wildlife identification number that corresponds to an inaccurate or outdated address or phone number; and

(c) Contact the department to provide updated address and phone number.

(5) A wildlife identification number is valid for the life of the holder.

Section 5. Hunting Season Dates. Except as specified in 301 KAR 2:049 or 301 KAR 2:125, a person shall not take the following wildlife except during the dates specified in this section:

(1) Bobcat: from noon on the fourth Saturday in November through the last day of February.

(2) Coyote: year round.

(3) Raccoon and Opossum: October 1 through the last day of February.

(4) All other furbearers: from noon on the third day of the modern gun deer season through the last day of February.

(5) Furbearers taken by falconry: September 1 through March 30.

Section 6. Trapping Season Dates. Except as specified in 301 KAR 2:049 or 301 KAR 2:125, a person shall not take furbearers except from noon on the third day of the modern gun deer season through the last day of February.

Section 7. License-Exempt Season for Youth. For seven (7) consecutive days beginning on the Saturday after Christmas, a youth may hunt or trap furbearers without a license, but all other statewide requirements shall apply.

Section 8. Bag Limits. **[**~~(1)~~**]** There shall not be a bag limit on furbearers except**:**

(1)[~~; (a)~~**]** A person shall not take more than five (5) bobcats per season, no more than three (3) of which shall be taken with a gun;

(2)[~~(b)~~**]** A person shall not take more than ten (10) river otters per season in Otter Zone 1;

(3)[~~(c)~~**]** A person shall not take more than six (6) river otters per season in Otter Zone 2;

(4)[~~(d)~~**]** The total river otter bag limit per season shall be ten (10) per person, only six (6) of which can be taken from Otter Zone 2; and

(5)[~~(e)~~**]** A falconer hunting within the falconry season, but outside the dates specified in Section 5(3) and **[**~~5~~**]**(4) of this administrative regulation, shall not take more than two (2) of any furbearer per day.

Section 9. Harvest Recording. (1) Immediately after taking a river otter or bobcat, and before moving the carcass, a person shall record in writing the following information:

(a) The species;

(b) The date;

(c) The county where taken; and

(d) The sex of the animal.

(2) The information listed in subsection (1) of this section shall be recorded on one of the following:

(a) The hunter's log section on the reverse side of a license or permit;

(b) The hunter's log section in the current hunting and trapping guide;

(c) A hunter's log available from any KDSS agent; or

(d) An index card or similar card.

(3) A person shall retain and possess the completed hunter's log while hunting or trapping during the current season.

Section 10. Checking a River Otter or Bobcat. (1) A person who takes a river otter or bobcat shall**:**

(a) check each animal by calling the toll free number listed in the current hunting and trapping guide on the day the river otter or bobcat is harvested**;[**~~, and:~~**]**

(b)[~~(a)~~**]** Provide the information requested by the automated check-in system; and

(c)[~~(b)~~**]** Write the confirmation number provided by the automated check-in system on the hunter's log described in Section 9 of this administrative regulation.

(2) A person who intends to sell the raw fur of a river otter or bobcat to a licensed fur processor, fur buyer, or taxidermist or wishing to export a river otter or bobcat pelt outside the United States shall:

(a) Contact the department and request a Convention on International Trade of Endangered Species of Flora and Fauna (CITES) tag by providing:

1. A valid confirmation number as described in subsection (1) of this section; and

2. A street address where the tag is to be mailed; or

(b) Access the department's **Web site[**~~website~~**]** at fw.ky.gov and complete and submit the CITES tag request form to the department.

(3) A person who intends to transfer to another person a river otter or bobcat that does not have an attached CITES tag shall attach to the carcass a handmade tag that contains the following:

(a) The confirmation number;

(b) The hunter or trapper's name; and

(c) The hunter or trapper's phone number.

(4) A person shall not provide false information when:

(a) Completing the hunter's log;

(b) Checking a river otter or bobcat; or

(c) Creating a handmade carcass tag.

(5) A CITES tag shall be attached to the raw fur, pelt, or unskinned carcass per the instructions provided by the department and remain with the pelt until it is processed or exported outside the United States.

(6) Possession of an unused CITES tag is prohibited unless authorized by the department.

Section 11. Transporting and Processing a River Otter or Bobcat. (1) A person shall not sell the raw fur of a river otter or bobcat except to a licensed:

(a) Fur buyer;

(b) Fur processor; or

(c) Taxidermist.

(2) A taxidermist, fur buyer, or fur processor shall:

(a) Not accept a river otter or bobcat carcass or any part of a river otter or bobcat without a proper carcass tag or CITES tag described in Section 10 of this administrative regulation; and

(b) Keep the following information from a hunter or trapper:

1. Name;

2. Address;

3. Confirmation number or CITES tag number; and

4. Date received for each river otter or bobcat.[~~Hunting and Trapping Seasons. Except as specified in 301 KAR 2:049 or 301 KAR 2:125, a person shall not take the following wildlife except during the dates specified in this section:~~

~~(1) Raccoon and opossum:~~

~~(a) Hunting from: November 1 through the last day of February. During the modern gun deer season, as established in 301 KAR 2:172 a raccoon or opossum hunter shall not take raccoons or opossums during daylight hours;~~

~~(b) Trapping: from noon on the third day of the modern gun deer season through the last day of February.~~

~~(2) Coyote:~~

~~(a) Hunting: year round.~~

~~(b) Trapping: from noon on the third day of modern gun deer season through the last day of February.~~

~~(3) Bobcat:~~

~~(a) Hunting: from noon on the third Saturday in November through January 31.~~

~~(b) Trapping: from noon on the third day of the modern gun deer season through the last day of February.~~

~~(4) All other furbearers: from noon on the third day of the modern gun deer season through the last day of February.~~

~~(5) Furbearers taken by falconry: September 1 through March 30.~~

~~(6) There shall not be a closed season on:~~

~~(a) Chasing red and gray foxes during daylight hours for sport and not to kill; and~~

~~(b) Chasing raccoons or opossums for sport and not to kill.~~

~~(7) For seven (7) consecutive days beginning on the Saturday after Christmas, a youth may hunt or trap furbearers without a hunting or trapping license, but all other statewide requirements shall apply.~~

~~Section 3. Bag Limits. (1) There shall not be a bag limit on furbearers except for:~~

~~(a) Bobcats;~~

~~(b) River otters; and~~

~~(c) Those taken by falconry.~~

~~(2) A person shall not take more than five (5) bobcats per season, no more than three (3) of which shall be taken with a gun.~~

~~(3) A person shall not take more than six (6) river otters per season.~~

~~(4) A falconer hunting within the falconry season, but outside the dates specified in Section 2(1) through (4) of this administrative regulation, shall not take more than two (2) of any furbearer per day.~~

~~Section 4. Legal Hours of Take. (1) Furbearers: daylight hours only, except for raccoon and opossum.~~

~~(2) Raccoon and opossum: day or night, except that a person shall not take raccoons or opossums during daylight hours during the modern gun deer season, as established in 301 KAR 2:172.~~

~~Section 5. Use of Calls. A hunter may use a hand- or mouth-operated call, electronic call, or any other attracting device during a furbearer hunting season.~~

~~Section 6. Raccoon and Opossum Restrictions. (1) A hunter shall not use a light from a boat to take raccoon or opossum.~~

~~(2) Except as specified in subsection (3) of this section, a person shall not use the following while chasing raccoon or opossum from noon on March 1 through October 31:~~

~~(a) A firearm;~~

~~(b) Slingshot;~~

~~(c) Tree climber;~~

~~(d) Squaller; or~~

~~(e) Any device to kill, injure, or force a raccoon or opossum from a tree or den.~~

~~(3) A person participating in a department-approved raccoon dog trial sanctioned by one (1) of the following organizations may use a squaller:~~

~~(a) The American Coon Hunters Association;~~
~~(b) The American Kennel Club/American Coon Hunters Association;~~
~~(c) The National Kennel Club;~~
~~(d) The Professional Kennel Club;~~
~~(e) The United Coon Hunters Association; and~~
~~(f) The United Kennel Club.~~

~~Section 7. Trapping Methods. (1) A person who is trapping on dry land shall not:~~
~~(a) Set traps closer than ten (10) feet apart; or~~
~~(b) Use any trap except for the following:~~
~~1. Deadfall;~~
~~2. Wire cage or box trap;~~
~~3. Foothold trap with a maximum inside jaw spread of six (6) inches measured perpendicular to the hinges;~~
~~4. Body-gripping trap with a maximum inside jaw spread of seven and one-half (7.5) inches measured parallel with the trigger; or~~
~~5. A snare.~~
~~(2) There shall be no restrictions on the size or type of trap used as a water set.~~
~~(3) A trap shall not be set in a trail or path commonly used by a human or a domestic animal.~~
~~(4) A trapper may use lights from a boat or a vehicle.~~

~~Section 8. Harvest Recording. Immediately after taking a river otter or bobcat, a person shall:~~
~~(1) Record, in writing, the species, date taken, county where taken, and sex of the river otter or bobcat before moving the carcass from the site where taken. This information shall be logged and registered on one (1) of the following:~~
~~(a) Hunter's log section on the reverse side of a license or permit;~~
~~(b) Hunter's log from the current hunting and trapping guide;~~
~~(c) Hunter's log printed from the Internet;~~
~~(d) Hunter's log available from any KDSS agent; or~~
~~(e) An index or similar card; and~~
~~(2) Retain and possess the completed hunter's log if the hunter is in the field during the current season.~~

~~Section 9. Checking a River Otter or Bobcat. (1) A person shall check a harvested river otter or bobcat by calling the toll free number listed in the current hunting and trapping guide on the day the river otter or bobcat is harvested and:~~
~~(a) Providing the information requested by the automated check-in system; and~~
~~(b) Writing the confirmation number given by the automated check-in system on the hunter's log described in Section 8 of this administrative regulation.~~
~~(2) A person wishing to sell the raw fur of a river otter or bobcat to a licensed fur processor, fur buyer, or taxidermist or wishing to export a river otter or bobcat pelt outside the United States shall:~~
~~(a) Call the department's toll-free information number and request a Convention on International Trade of Endangered Species of Flora and Fauna (CITES) tag by providing:~~
~~1. A valid confirmation number as described in subsection (1) of this section; and~~
~~2. A street address where the tag is to be mailed; or~~
~~(b) Access the department's Web site at http://fw.ky.gov/ complete and submit the CITES tag request form.~~
~~(3) If a harvested river otter or bobcat leaves the possession of a hunter or trapper and does not have a CITES tag attached to it, the hunter or trapper shall attach a handmade tag to the carcass, that contains;~~
~~(a) The confirmation number;~~
~~(b) The hunter or trapper's name; and~~
~~(c) The hunter or trapper's phone number.~~
~~(4) A person shall not provide false information if completing the hunter's log, checking a river otter or bobcat, or creating a carcass tag.~~
~~(5) A CITES tag shall be attached to the raw fur, pelt, or unskinned carcass per the instructions provided by the department and remain with the pelt until it is processed or exported outside the United States.~~
~~(6) Possession of an unused CITES tag is prohibited unless authorized by the department.~~

~~Section 10. Transporting and Processing a River Otter or Bobcat. (1) A person shall not sell the raw fur of a river otter or bobcat except to a licensed:~~
~~(a) Fur buyer;~~
~~(b) Fur processor; or~~
~~(c) Taxidermist.~~
~~(2) A taxidermist, fur buyer, or fur processor shall:~~
~~(a) Not accept a river otter or bobcat carcass or any part of a river otter or bobcat without a proper carcass tag or CITES tag described in Section 9 of this administrative regulation; and~~
~~(b) Keep the following information from a hunter or trapper:~~
~~1. Name;~~
~~2. Address;~~
~~3. Confirmation number or CITES tag number; and~~
~~4. Date received for each river otter or bobcat.~~

~~Section 11. Trap Tags. (1) Each trap shall have a metal tag attached to it that clearly shows one (1) of the following:~~
~~(a) The name and address of the person setting, using, or maintaining the trap; or~~
~~(b) A wildlife identification number issued by the department and the 1-800-25ALERT department hotline phone number.~~
~~(2) A person may apply for a wildlife identification number by:~~
~~(a) Accessing the department's Web site at http://fw.ky.gov/; or~~
~~(b) Calling the department's information center at 1-800-858-1549.~~
~~(3) The following information shall be required for a person to apply for a wildlife identification number:~~
~~(a) Name;~~
~~(b) Current home address;~~
~~(c) Social Security number;~~
~~(d) Current phone number;~~
~~(e) Date of birth; and~~
~~(f) Driver's license number, if available.~~
~~(4) A person shall:~~
~~(a) Not use a trap tag that has an inaccurate or outdated address;~~
~~(b) Not use a trap tag that has a wildlife identification number that corresponds to an inaccurate or outdated address or phone number; and~~
~~(c) Contact the department to provide updated address and phone number.~~
~~(5) A wildlife identification number is valid for the life of the holder.~~]

BENJY T. KINMAN, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
MARCHETA SPARROW, Secretary
APPROVED BY AGENCY: February 8, 2012
FILED WITH LRC: February 10, 2012 at noon
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, email fwpubliccomments@ky.gov

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Sex Offender Risk Assessment Advisory Board
(As Amended at ARRS, May 8, 2012)

501 KAR 6:200. Comprehensive sex offender presentence evaluation procedure.

RELATES TO: KRS 17.550-17.991
STATUTORY AUTHORITY: KRS 17.554(2), 17.564
NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.554(2) authorizes the Sex Offender Risk Assessment Advisory Board to establish a comprehensive sex offender presentence evaluation procedure for court-ordered evaluations of sex offend-

ers. KRS 17.564(1) authorizes the board to promulgate administrative regulations necessary to carry into effect the purposes of KRS 17.500 to 17.580 and 17.991. This administrative regulation establishes the evaluation procedure to **ensure[**~~assure~~**]** the quality of court-order comprehensive sex offender presentence evaluations.

Section 1. Definitions. (1) "Amenability to treatment" means the offender is free from organic or psychological impairment that **would[**~~shall~~**]** prevent the offender from engaging meaningfully in sex offender treatment and he is, at least minimally, receptive to the treatment process.

(2) "Appropriate setting" means a secure institutional setting or a community-based setting.

(3) "Approved provider" is defined by KRS 17.550(3).

(4) "Board" is defined by KRS 17.550(1).

(5) "Clinically adjusted" means a change in the risk level recommendation based on facts or evidence which indicate to an approved provider that the probability of recidivism ranges are inappropriate for a sex offender.

(6) "Comprehensive sex offender presentence evaluation" means a comprehensive mental health evaluation by an approved provider that includes a focus on the clinical data necessary to address the four (4) areas of assessment listed in KRS 17.554(2).

(7) "Nature of required sex offender treatment" means the treatment management issues including recommendations for the focus of treatment, special treatment considerations, further evaluation, and restrictions to minimize the risk of recidivism.

(8) "Risk of recommitting a sex crime" means a designation of high or not high risk based on the finding of the instrument used or other clinically relevant data that suggests sexual reoffense is more likely than not.

(9) "Sex offender" is defined by KRS 17.550(2).

Section 2. Comprehensive Sex Offender Presentence Evaluation Procedures. (1)(a) An approved provider shall conduct a comprehensive mental health evaluation following the professional standards of care in the area of his certification or licensure.

(b) The evaluation shall include a face-to-face interview and a review of collateral information. The face-to-face interview may be conducted by videoconferencing if it allows the approved provider to see the offender at all times during the interview.

(c) If the results of initial mental health screening procedure dictate, additional appropriate psychological testing addressing cognitive functioning, mental illness, and severe characterological impairment shall be employed as circumstances allow.

(2) Risk of recommitting a sex crime shall be determined in the following manner:

(a) If applicable, an actuarial instrument shall be used which is appropriate to the sex offender. An actuarial instrument shall be appropriate for use if:

1. The instrument's developmental sample or subsequent study samples contained individuals with characteristics similar to the offender being evaluated; and

2. The instrument's reliability and validity has been demonstrated through research. The results of the instrument may be clinically adjusted at the discretion of the approved provider.

(b) If an actuarial instrument is not appropriate, an empirically guided approach shall be used. An empirically-guided approach shall mean that the approved provider shall consider risk factors that research has demonstrated to be associated with risk for recidivism.

(3) The threat to public safety shall be determined in the following manner:

(a) The approved provider shall consider the following domains in assessing the sex offender's immediate threat to public safety and in arriving at a recommendation regarding an appropriate treatment setting:

1. The sex offender's amenability to treatment;

2. The degree of threat of harm or actual force employed in the index offense and in prior offenses;

3. The nature and duration of the offending;

4. The sex offender's psychological adjustment;

5. The sex offender's social and occupational adjustment; and

6. The sex offender's statements or indications of harm directed to another.

(b) The approved provider shall make a recommendation as to the appropriate setting in which treatment, if indicated, **should[**~~shall~~**]** be provided for the sex offender.

(4) To assess amenability, the approved provider shall address the following factors. The sex offender shall:

(a) Not exhibit symptoms of a psychological disturbance that may significantly inhibit treatment participation;

(b) Exhibit a level of intellectual functioning sufficient to complete the task assigned in the treatment program to which he **will[**~~shall~~**]** be referred;

(c) Acknowledge involvement in the sex offense for which he is charged;

(d) Consider his involvement in the sex offense to be a problematic behavior that he does not want to repeat; and

(e) Verbalize a willingness to enter and fully participate in treatment.

(5) In assessing the nature of required sex offender treatment, the approved provider shall address management issues including:

(a) Recommendations for the focus of treatment;

(b) Special treatment considerations;

(c) Further evaluation; and

(d) Restrictions to minimize the risk of recidivism.

Section 3. Evaluation Report. (1) An approved provider shall prepare a comprehensive sex offender presentence evaluation report to the court in the form of a bifurcated document.

(2) The first section of the report shall consist of information prepared specifically for the court and shall contain the following headings:

(a) Identifying information including:

1. Name;

2. Social Security number;

3. Date of birth;

4. Age; and

5. Indictment number or county;

(b) Referral information, including reason for referral, informed consent, and procedures;

(c) Information sources; and

(d) Summary, conclusions, and recommendations.

(3) The second section shall include the following information from which the summary and conclusions were reached:

(a) Criminal justice information, including index offense, prior sex offense, or other legal history;

(b) Psychosocial history including:

1. Family of origin;

2. Education;

3. Military;

4. Occupational;

5. Financial;

6. Sexual;

7. Relationship;

8. Mental health; and

9. Medical;

(c) Behavioral observations and mental status;

(d) Psychological testing;

(e) Diagnosis impressions;

(f) Treatment considerations; and

(g) The statutory factors found in KRS 17.554(2).

(4) The report shall be entitled "Comprehensive Sex Offender Presentence Evaluation."

(5) An approved provider shall place his signature at the end of the recommendation report if he:

(a) Conducted the comprehensive sex offender presentence evaluation; or

(b) Reviewed and approved the evaluation.

(6) If the approved provider previously provided treatment to the sex offender, he shall not perform a sex offender presentence evaluation for the offender.[~~(7) If an approved provider has performed a sex offender presentence evaluation for the offender, he shall not provide sex offender treatment for that individual.~~]

Section 4. Recordkeeping. (1) An approved provider shall:

(a) Transmit all comprehensive sex offender presentence eval-

uation information to the board; or

(b) Maintain the information for a period of fifteen (15) years.

(2) The original or a copy of all comprehensive sex offender presentence evaluation information shall be provided to the board:

(a) Upon request; or

(b) At the death of the approved provider.

This is to certify that the Sex Offender Risk Assessment Advisory Board approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a) as reflected by the signature below.

LADONNA H. THOMPSON, Commissioner
JAMES J. VAN NORT, Chairperson

APPROVED BY AGENCY: March 6, 2012

FILED WITH LRC: March 15, 2012 at 10 a.m.

CONTACT PERSON: Amy Barker, Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, May 8, 2012)

501 KAR 6:240. Home incarceration using an approved monitoring device.

RELATES TO: KRS 17.500, 17.550, 196.030, 196.035, 197.020, 197.170, 439.330, 439.346, 439.348, 439.470, 440.010, 520.010, 532.200, 532.210, 532.220, 532.230, 532.240, 532.250, 532.260, 532.262, 533.020, 533.030 [~~Chapters 196, 197, 439, 532~~]

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.346, 439.348, 439.470, 532.260

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

Section 1. Incorporation by Reference. (1) "Department of Corrections policies and procedures for home incarceration using an approved monitoring device," **May 8[**~~March 15~~**]**, 2012[~~July 9, 2007~~], are incorporated by reference. These policies and procedures include:

25.12 Home Incarceration and Monitoring of Inmates (Amended **5/8/12[**~~3/15/12~~**]**[~~07/09/07~~])

27-15-02 Curfew and Monitoring (Amended **5/8/12[**~~3/15/12~~**]** [~~8/9/05~~])

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m.

LADONNA H. THOMPSON, Commissioner

APPROVED BY AGENCY: March 6, 2012

FILED WITH LRC: March 15, 2012 at 10 a.m.

CONTACT PERSON: Amy V. Barker, Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686.

JUSTICE AND PUBLIC SAFETY CABINET
Kentucky Law Enforcement Council
(As Amended at ARRS, May 8, 2012)

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

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

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

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

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

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

(2) Attain:

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

(b) An eighty-four (84)[~~eighty (80)~~] percent on the [~~overall score in~~] First Aid/CPR/AED written examination.[~~Aid/CPR/AED.~~] A recruit who does not achieve an eighty-four[~~eighty (80)~~] percent overall score shall be considered to have failed the component; and

(c) An eighty (80) percent overall score on the Defensive Tactics: Written Examination. A recruit who does not achieve an eighty (80) percent overall score shall be considered to have failed the component.[~~basic training;~~]

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

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

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

(1) Physical training entry requirements.

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

1. Bench press;
2. Sit-ups;
3. 300 meter run;
4. Push-ups; and
5. One and five-tenths (1.5) mile run.

(b) A recruit shall pass the physical training entry requirements if he or she achieves a score of fifty (50) points or more, based upon the following scoring of the physical training events listed in paragraph (a) of this subsection:

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

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

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

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

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

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

2. Sit-ups:

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

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

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

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

3. 300 meter run:

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

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

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

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

4. Push-ups:

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

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

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

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

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

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

a. 9 points - Recruit shall complete in 1,076 seconds (17:56) or less;

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

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

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

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

(c) A recruit shall:

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

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

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

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

(d) Retest.

1. A recruit that fails to meet the lowest performance level in a test event, thus earning a zero point value for that event, shall be granted a retest opportunity in that event without having to retest in the other events for which a point value was obtained, except that a retest shall not be granted unless the maximum value of eleven (11) points would allow the applicant to meet the required overall fifty (50) point minimum.

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

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

4. All failed events shall be retested on the same date.

5. If the recruit passes all previously failed events on the date of the retest, the recruit shall have met the physical training entry requirements.

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

(2) Physical training graduation requirements.

(a) In order to graduate, the recruit shall successfully complete each of the following physical ability requirements within five (5) days of graduation from law enforcement basic training, which, except for the entry test score requirements in subsection (1)(b) of this administrative regulation, shall be administered in the same order and in conformity with the KLEC Physical Fitness Testing Protocols, incorporated by reference in 503 KAR 1:140:

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

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

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

4. Push-ups. Twenty-five (25) push-ups; and

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Be removed from the basic training class;

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

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

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

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

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

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

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

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

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

(3) A recruit who is permitted to return to basic training in ac-

cordance with this section and is removed due to failure a second time shall:

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

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

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

(1) Administration and testing;

(2) Telecommunications (MDT);

(3) Legal subjects;

(4) Physical training;

(5) Defensive tactics;

(6) Patrol;

(7) Vehicle operations;

(8) Firearms;

(9) Criminal investigation;

(10) D.U.I./Field sobriety testing;

(11) Breath testing;

(12) Practical evaluation/testing;

(13) First Aid/C.P.R./A.E.D.; and

(14) Homeland security.

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

(a) Area I:

1. Academic Examination 1;

2. Vehicle Operations: Day Range;

3. Work Zone Safety;

4. Criminal Justice Information System: Mobile Data Terminal (CJIS:MDT); and

5. Academic Examination 2;

(b) Area II:

1. Breath Test Operator: Practical;

2. Breath Test Operator: Written;

3. DUI: Practical; and

4. DUI: Written;

(c) Area III:

1. First Aid/Cardiopulmonary Resuscitation/Automated External Defibrillation: Written;

2. Cardiopulmonary Resuscitation/Automated External Defibrillation: Practical;

3. [~~Cardiopulmonary Resuscitation (CPR): Practical;~~

~~2. Cardiopulmonary Resuscitation (CPR):~~ ~~Written;~~

~~3. Automated External Defibrillation (AED): Written;4.~~**]**First Aid: Practical; and

4. [~~5. First Aid: Written; and~~

~~6.~~] Practical Examination 1;

(d) Area IV:

1. Academic Examination 3;

2. Handgun: Day;

3. Handgun: Low Level Light; and

4. Academic Examination 4;

(e) Area V:

1. Long Gun: Shotgun Day;

2. Long Gun: Shotgun Low Level Light;

3. Long Gun: Rifle Day; and

4. Long Gun: Rifle Low Level Light; and

(f) Area VI:

1. Defensive Tactics: Written;

2. Law Enforcement Prevention and Deterrence of Terrorist Acts;

3. Defensive Tactics: Practical;

4.[~~3.~~] Academic Examination 5: Final Exam; and

5.[~~4.~~] Practical Examination 2.

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

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

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

(b) Later than:

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

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

(4) Failure of a defensive tactics examination or Practical Examination 2.

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

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

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

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

(c) If a recruit fails Practical Examination 2, the recruit may be reexamined:

1. Immediately; or

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

(5) A recruit shall fail basic training if the recruit:

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) All training records shall be:

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

(b) Maintained in accordance with applicable provisions of KRS Chapter 171.

KEITH CAIN, Chair

APPROVED BY AGENCY: March 14, 2012
FILED WITH LRC: March 14, 2012 at 1 p.m.
CONTACT PERSON: Stephen D. Lynn, Assistant General Counsel, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102, phone (859) 622-3073, fax (859) 622-5027.

JUSTICE AND PUBLIC SAFETY CABINET
Kentucky Law Enforcement Council
(As Amended at ARRS, May 8, 2012)

503 KAR 3:070. Telecommunications (Public Safety Dispatch Non-CJIS) Academy.[~~academy (non-CJIS).~~]

RELATES TO: KRS 15.530, 15.560
STATUTORY AUTHORITY: KRS 15.590
NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.590 authorizes the Kentucky Law Enforcement Council[~~requires the Commissioner of the Department of Criminal Justice Training~~] to promulgate administrative regulations regarding training and telecommunications practices. This administrative regulation establishes the course and graduation requirements of the Telecommunications (Public Safety Dispatch Non-CJIS) Academy[~~ non-CJIS~~].

Section 1. Definitions. (1) "Academy" means the 165 1/2[~~128~~] hour Telecommunications (Public Safety Dispatch Non-CJIS) Academy course conducted by the Department **of Criminal Justice Training** that does not include training on the Criminal Justice Information System (CJIS).
(2) "KLEC" means the Kentucky Law Enforcement Council.

Section 2. Academy Content. The academy shall consist of the following seven (7)[~~six (6)~~] areas:
(1) Introduction to Dispatching;[~~Basic telecommunications;~~]
(2) Duties and Responsibilities;[~~Emergency medical dispatch;~~]
(3) Phone procedures;[~~Cardiopulmonary resuscitation (CPR);~~]
(4) Radio procedures;[~~Critical incidents;~~]
(5) Calls for service;[~~Spanish for the telecommunicator; and~~]
(6) Emergency medical dispatch; and
(7) Final Exam and Graduation.[~~Incident command, Homeland Security.~~]

Section 3. Academy Graduation Requirements. (1) To graduate from the academy, a trainee shall:
(a) Successfully complete a minimum of 165 1/2[~~128~~] hours of KLEC-approved training;
(b) Attain a passing score on all examinations for which a numerical score is assigned, as follows:
1. Minimum score on the Emergency Medical Dispatch written examination as set by the Emergency Medical Dispatch provider;[~~Eighty (80) percent on the Emergency Medical Dispatch written examination;~~]
2. Minimum score on the CPR written examination as set by the CPR provider;[~~Eighty (80) percent on the CPR written examination;~~] and
3. Seventy (70) percent on all other examinations for which a numerical score is assigned;
(c) Pass all examinations for which a pass or fail designation is assigned; and
(d) Successfully complete all other assignments, exercises, and projects included in the academy. After-hours assignments may be required, and if required, they shall be successfully completed to pass the training area for which they were assigned.
(2) A trainee shall be considered to have failed the academy if the trainee does not meet the requirements established in subsection (1) of this section.[~~(3) To avoid unnecessary repetition of coursework:~~
~~(a) A telecommunicator who attends the Non-CJIS Telecommunications Academy and has previously successfully completed basic telecommunications or any other area of the Non-CJIS Telecommunications Academy, as established in Section 2 of this administrative regulation, shall:~~
~~1. Receive credit for that training area; and~~
~~2. Not be required to repeat that training area of the Non-CJIS Telecommunications Academy; and~~
~~(b) The Commissioner of the Department of Criminal Justice Training may, upon written request, award a certificate of completion to a law enforcement telecommunicator who has successfully completed all of the training areas that compose the Non-CJIS Telecommunications Academy.~~]

Section 4. Reexaminations. (1) A trainee shall be permitted one (1) reexamination.
(2) A trainee who fails an examination shall not be reexamined:
(a) Earlier than twenty-four (24)[~~forty-eight (48)~~] hours from the original examination; or
(b) Later than the last scheduled day before the academy graduation.[~~of the academy.~~]
(3) A trainee shall be considered to have failed the academy if the trainee fails a reexamination.

Section 5. Failure and Repetition of Academy.(1) A trainee who has failed an academy shall be permitted to repeat one (1) academy in its entirety during the following twelve (12) months.
(2) The trainee or his agency shall pay all fees for the repeated academy.

Section 6. Absence. (1) A trainee may have excused absences from the academy with approval of the[~~Professional Development~~] Branch manager or telecommunications training section supervisor.
(2) If an excused absence causes a trainee to miss any of the 165 1/2[~~128~~] hours of the academy, the training shall be made up through an additional training assignment.
(3) If a trainee's absence is excused and he or she misses more than ten (10) percent of the total hours of the academy, the trainee shall be withdrawn from the academy and reenrolled in a subsequent class beginning at the point at which the trainee was absent. The time period for reenrollment in a subsequent class shall not exceed six (6) months from the date of the class from which the trainee was withdrawn.
(4) If a trainee's absence is unexcused and he or she misses more than ten (10) percent of the total hours of the academy, the trainee shall be withdrawn from the academy and receive no credit for completed training.

Section 7. Circumstances Preventing Completion of the Academy. If a trainee is prevented from completing the academy due to extenuating circumstances beyond the control of the trainee, including injury, illness, personal tragedy, or agency emergency, he shall be permitted to complete the unfinished areas of the academy within 180 days immediately following the termination of the extenuating circumstance, if the:
(1) Extenuating circumstance preventing completion of the academy does not last for a period longer than one (1) year; and
(2) Failure to complete is not caused by a preexisting physical injury or preexisting physiological condition.

Section 8. Termination of Employment While Enrolled. (1) If, while enrolled in the academy, a trainee's employment as a dispatcher[~~telecommunicator~~] is terminated by resignation or dismissal and he is unable to complete the academy, he may complete the remaining training within one (1) year of reemployment as a dispatcher[~~telecommunicator~~].
(2) The trainee shall repeat the academy in its entirety if:
(a) The break in employment exceeds one (1) year; or
(b) The termination of employment is a result, directly or indirectly, of disciplinary action taken by the department against the trainee while enrolled in the academy.

Section 9. Maintenance of Records. All training records shall be:
(1) Available to the KLEC and the Secretary of the Justice **and Public Safety** Cabinet for inspection or other appropriate purposes; and
(2) Maintained in accordance with KRS Chapter 171.

KEITH CAIN, Chair

APPROVED BY AGENCY: January 18, 2012

FILED WITH LRC: January 18, 2011 at 11 a.m.

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TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
(As Amended at ARRS, May 8, 2012)

601 KAR 1:018. Special overweight or overdimensional motor vehicle load permits.

RELATES TO: KRS 175.450, 177.390-177.570, 177.9771, 186.010(8), 186.050[~~(8), (9)~~], 189.221, 189.2225(3), 189.270, **189.271,** 189.2715, 189.2717,[~~281.752,~~] 281.838, 23 C.F.R. 658.17, 49 C.F.R. 367, 393.11

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

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

Section 1. Definitions. (1) "Axle spacing" means the measurable distance between the axle centers of the axle unit.

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

(3) "**Cosignor" ["**~~Cosigner"~~] means a shipper of goods.

(4) "**Cosignee" ["**~~Cosigner"~~] means a recipient of goods.

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

(6)[~~(3)~~] "Dual-wheel axle" means one (1) axle with two (2) wheels on each side of the axle.[~~(4) "Farm implement or equipment" means machinery, equipment, or vehicle used exclusively in a farm or agriculture operation including those farm implements in KRS 186.010(8)(a) that are not required by to be registered.~~]

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

~~(a) Gives preference to through traffic;~~

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

~~(c) Has no highway grade crossing or intersection.~~

~~(8)~~**]**[~~(6)~~] "Height pole" means a vertical clearance measuring device.

(8)[~~(9)~~**]** "International bill of lading" means a receipt or ticket for property tendered for transportation by a common motor carrier or private carrier in foreign commerce containing the following information:

(a) Cosignor;

(b) Cosignee;

(c) Origin and destination points;

(d) Number of packages;

(e) Description of freight or goods; and

(f) Date.

(9)[~~(10)~~**]**[~~(6)~~] "Nondivisible load" means a load or vehicle, that[~~which~~] if separated into smaller loads or vehicles would:

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

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

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

(10)[~~(11)~~**]**[~~(7)~~] "Overdimensional" means the motor vehicle exceeds the dimension limits established in[~~set forth in~~] 603 KAR 5:070.

(11)[~~(12)~~**]**[~~(8)~~] "Overweight" means the motor vehicle exceeds:

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

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

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

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

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

(12)[~~(13)~~**]**[~~(9)~~] "Permit fee" means the fee established in KRS 189.270, 189.2715, or 189.2717 for the issuance of an overweight or overdimensional trip or annual permit, to cover the cost of processing the permit application, including:

(a) A qualification check of the applicant;

(b) A statutory compliance check; and

(c) An initial bridge and weight analysis.

(13)[~~(14)~~**]**[~~(10)~~] "Pole trailer" means a motor vehicle without motive power that is:

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

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

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

(15)[~~(16)~~**]**[~~(11)~~]**[**~~"Single-wheel axle" means one (1) load bearing axle with one (1) wheel on each side of the axle.~~

~~(17)~~**]** "Steering axle" means the axle or axles of a vehicle or combination of vehicles by which the vehicle or vehicles are guided or steered.

(16)[~~(18)~~**]** "Tandem" means any two (2) axles with centers forty two (42) inches or more apart but less than ninety six (96) inches apart.

(17)[~~(19)~~**]** "Tridem" means any three (3) consecutive axles with centers forty two (42) inches or more apart and less than 120 inches apart.

(18)[~~(20)~~**]**[~~(12)~~]**[**~~"Toll road" means any project constructed under the provisions of KRS Chapter 175.450 or KRS 177.390 through 177.570 on which a toll is collected or was in the past collected by the Transportation Cabinet.~~

~~(21)~~**]** "Trunnion axle" means an axle configuration with two **(2)** individual axles mounted in the same transverse plane with four (4) tires on each axle connected at a pivot point that allows each individual axle to oscillate in a vertical plane to provide constant and equal weight distribution on each individual axle.

(19)[~~(22)~~**]**[~~(13)~~] "Utility equipment" means the specialized equipment, including earth-moving equipment, necessary for the installation or operation of utility poles or pipes, transformers, regulators, or other utility electrical field equipment. It does not include **[**~~any~~**]**equipment necessary for the construction or operation of a power generation station.

Section 2. **Overweight or Overdimensional** Permit Application. (1) An applicant for an overweight or overdimensional single trip permit shall submit a completed Kentucky Overweight or Overdimensional Permit Worksheet, TC Form 95-10 to the Division of Motor Carriers.

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

(3) An application for **an overweight or overdimensional[**~~a~~**]** single trip or annual permit shall be submitted to the Division of Motor Carriers by:

(a) Hand delivery;

(b) Mail;

(c) Fax; or

(d) The online motor carrier permitting system.

[~~(4) A permit application shall contain the following:~~

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

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

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

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

~~(e) Routes requested for travel; and~~

~~(f) The period of time requested for travel:~~]

(4) **An overweight or overdimensional[**~~A~~**]** single trip permit shall be valid for:

(a) One (1) move; and

(b) A duration of ten (10) days.[~~1. A single trip shall be ten (10) days or less; or 2~~]

(5) An **overweight or overdimensional** annual permit shall be valid for 365 days from date of issue.

(6)[~~(2)~~] **An overweight or overdimensional[**~~A~~**]** single trip permit application or request shall specify the following:

(a) The year,[~~and~~] make, and vehicle identification number of the towing vehicle;

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

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

(d) The state of registration of the vehicle;

(e) The name,[~~and~~] address, and telephone number of the owner;

(f) The dates of travel;

(g) The serial number for a manufactured home;[~~and~~]

(h) The specific routes of travel requested; [~~.~~]

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

(j) The Kentucky Highway Use License (KYU License) or the DOT number; and

(k) Axle spacing.

(7)[~~(3)~~**]** If the towing vehicle for which **an overweight or overdimensional[**~~a~~**]** single trip permit is being requested is registered in a state other than Kentucky, the vehicle shall be either:

(a) Apportioned registered to operate in Kentucky; or

(b) In compliance with KRS 281.838[~~KRS 281.752~~].

(8) An overweight or overdimensional[~~(4) An~~**]** annual permit application or request shall specify the following information relating to the motor vehicle:

(a) Year and make;

(b) Vehicle identification number;

(c) License plate number and unit number;

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

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

(f) Name,[~~and~~] address, and telephone number of the motor carrier operating or the owner of the towing vehicle;

(g) If the motor carrier operating the towing vehicle is a for-hire or private carrier; [~~and~~]

(h) A general description of cargo;[~~.~~]

(i) Axle spacing; and

(j) The Kentucky Highway Use License (KYU License) or the DOT number.

(9)[~~(5)~~**]** If the towing vehicle issued an **overweight or overdimensional** annual permit is registered in a state other than Kentucky, the vehicle shall be apportioned registered to operate in Kentucky.

(10) A special overweight or overdimensional[~~(6) Special~~**]** annual or trip **permit[**~~permits~~**]** to allow the movement of **a motor vehicle with a gross weight or gross dimension[**~~motor vehicles with gross weights or gross dimensions~~**]** in excess of the weights and dimensions **established in KRS 189.270, 189.271, 189.2715, and 189.2717[**~~specified by statute and administrative regulation~~**]** shall be issued by the Division of Motor Carriers if the movement is necessary to provide transportation for specified cargo in the interest of the health, welfare, or economy of the people.

(11) Each overweight or overdimensional[~~(7) Each~~**]** trip or annual permit issued shall be limited to designated portions of the state primary road system and stated periods of time.

(12) A separate overweight or overdimensional[~~(8) A separate~~**]** permit shall be required for each vehicle involved in a movement.

(13) An overweight or overdimensional[~~(9) A~~**]** permit shall not be issued for a divisible load that if reasonably divided, dismantled, disassembled, or rearranged would no longer be overweight or overdimensional except as provided by KRS 189.2715 or 189.2717.

(14) An overweight or overdimensional[~~(10) An overweight~~**]** permit shall not be issued to the following:

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

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

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

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

2. The vehicle has met the provisions of KRS 281.838[~~KRS 281.752~~];

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

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

(15)[~~(11)~~**]** The cabinet shall further restrict the movement or deny the **overweight or overdimensional** permit for a movement that may cause damage to property or that may be detrimental to public safety **or[**~~and~~**]** convenience.

(16) An overweight or overdimensional[~~(12) An~~**]** annual permit shall not be issued if the vehicle is licensed with a limited or restricted registration as identified in KRS 186.050(8) and (9) for Kentucky-based vehicles.

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

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

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

(a) On a combination unit[~~units~~] of less than five (5) axles; or

(b) On a single unit except off-road equipment such as a road grader, mobile crane, or other self-propelled unit.

(2) A vehicle shall not be issued an overweight **or overdimensional** permit that does not have a declared gross weight of at least 80,000 lbs.

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

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

(b) Steering axle - 20,000 pounds;

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

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

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

(f)[~~(e)~~] Five (5) axle combination units not exceeding 96,000 pounds gross weight;

(g)[~~(f)~~] Six (6) axle combination units not exceeding 120,000 pounds gross weight;[~~or~~]

(h)[~~(g)~~] Seven (7) axle combination units not exceeding

160,000 pounds gross weight; or[.]

(i) Trunnion axle group maximum gross weight as determined by the formula established in 603 KAR 5:066**, Section 3(7)[**~~Section 2(7)~~**]**.

(4) Maximum weights shall not be permitted unless all bridges and roads on the moving route have sufficient capacity to accommodate the load.

(5) A self propelled truck crane shall not exceed the following axle, axle group weights, or gross weight:

(a) Single wheel axle**:[**~~,~~**]** 23,000 pounds;

(b) Tandem dual-wheel axle group**:[**~~,~~**]** 46,000 pounds; and

(c) Tridem **dual-wheel axle group:[**~~dual wheel axle group,~~**]** 69,000 pounds.

(6) The maximum gross weight for a four (4) axle **self-propelled truck crane shall be[**~~self propelled truck crane is~~**]** 92,000 pounds.

(7) The maximum gross weight for a five (5) axle **self-propelled truck crane shall be[**~~self propelled truck crane is~~**]** 115,000 pounds.

Section 5. Responsibility of **the Overweight or Overdimensional** Permit Holder. (1) **[**~~Any~~**]**Damage to **[**~~the~~**]**highway, signs, guardrails, or other public or private property caused by the transportation of the specialized equipment shall be the responsibility of the **overweight or overdimensional** permit holder. The **overweight or overdimensional** permit holder shall either repair all damage incurred or pay for the repair.

(2) **An overweight or overdimensional**[A**]** permit holder shall not cut, trim, remove, or relocate **a[**~~any~~**]** tree, shrub, guardrail, highway sign, or other object[~~on the highway right-of-way~~] without the written approval of the landowner or the chief district engineer or **[**~~their~~**]**designee in the district office where the property is physically located.

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

Section 6. **Overweight or Overdimensional** Permit Availability. (1) A valid **overweight or overdimensional** permit[~~The annual permit~~] issued by the Division of Motor Carriers shall be carried in the overweight or overdimensional vehicle **during transit[**~~at all times~~**]**.[~~(2) A valid single trip permit shall be carried in the overweight or overdimensional vehicle or equipment at all times.~~]

(2)[~~(3)~~] A valid **overweight or overdimensional** annual or single trip permit shall be presented upon request to **[**~~any~~**]**law enforcement **[**~~officer~~**]**or authorized personnel of the Department of Vehicle Regulation.

(3)[~~(4)~~] An **overweight or overdimensional** annual permit not authenticated by the Division of Motor Carriers shall not be valid.

Section 7. Duplicate **Overweight or Overdimensional** Permits. (1) A duplicate **overweight or overdimensional** permit that is needed to replace a lost, stolen, or destroyed annual permit or to transfer the permit to another towing vehicle shall be obtained from the Division of Motor Carriers by a payment of ten (10) dollars.

(2) One (1) transfer to another towing vehicle shall be allowed for each **overweight or overdimensional** annual permit during its effective year.

(3) An additional transfer of the **overweight or overdimensional** annual permit requested shall be subject to the **permit** fees established in KRS 189.270.

(4) The original **overweight or overdimensional** permit shall be returned to the Division of Motor Carriers prior to the transfer of an annual permit.

Section 8. Travel Restrictions. (1)[~~(a)1. A single trip permit shall be valid for ten (10) days.~~

~~2.~~] A time extension shall only be granted if the **overweight or overdimensional** permit holder proves extenuating circumstances, such as weather, fire, natural disaster, or unforeseen emergency.[~~(b) An annual permit shall be valid for 365 days from date of issuance~~]**[**~~.~~**]**

(2)(a) As needed for public safety, the department shall further prohibit movements in congested areas within the peak traffic hours.

(b) The additional restrictions shall be noted on the **overweight or overdimensional** permit upon issuance.

(3) Overdimensional restrictions shall not prohibit a utility company from working in an emergency situation to restore utility service to an area otherwise experiencing an outage.[~~Section 9. Farm Implements. (1) Unless the movement occurs on an interstate highway, toll road, or fully-controlled access highway, a permit shall not be required for transport of overdimensional farm implements from:~~

~~(a) One (1) farm to another;~~

~~(b) A farm to a repair shop or dealer; or~~

~~(c) A repair shop or dealer to a farm.~~

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

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

~~(a) Manufacturer to dealer;~~

~~(b) Dealer to manufacturer;~~

~~(c) Dealer to dealer; or~~

~~(d) Moves on an interstate highway, toll road, or fully-controlled access highway.~~

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

~~(a) Operated; or~~

~~(b) Issued a permit for movement.~~

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

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

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

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

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

~~(a) Select a different route; or~~

~~(b) Contact the Division of Motor Carriers for clearance to move the equipment over that specific route.~~

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

Section 9**.** Escort Vehicle Safety Requirements.[~~Section 10. Escort Vehicle, Safety and Flag Requirements.~~] (1) The provisions of this section shall not apply if the vehicle or equipment is less than twelve (12) feet wide and:

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

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

(c) Not transporting cargo.[~~(14)~~]

(2) **A**[~~(1)~~] required escort **vehicle[**~~vehicles~~**]** shall accompany the **overweight or** overdimensional vehicle at a distance of 300 feet (91.44 meters) on open highways unless it is necessary to travel at a distance closer or farther away from the vehicle accompanied **for safety or due to[**~~due to safety or~~**]** road conditions.[~~and shall:~~]

(3) An escort vehicle shall:

(a) Maintain radio contact with the load;

(b) Post appropriate signs on the vehicle;

(c) Have amber strobe lights or flashing lights on the escort vehicle;**[**~~and~~**]**

(d) Keep its headlamps lit **during transit; and[**~~at all times.~~**]**

(e) Use a height pole if the escorted load **is[**~~if~~**]** fifteen (15) feet or greater.[~~(2) In cities or congested areas, the escort shall travel at a distance closer than 300 feet as necessary to protect other traffic.~~]

(4) One (1) lead escort **shall be[**~~is~~**]** required for:

(a) A vehicle and load with a width in excess of ten (10) feet,

six (6) inches (three and two-tenths (3.2) meters), but twelve (12) feet (3.66 meters) or less in width travelling on a two (2) lane highway;

(b) A vehicle and load with a length in excess of seventy-five (75) feet (22.86 meters), but not more than eighty-five (85) feet (25.91 meters);

(c) Utility equipment, a pole, or pipe being transported that exceeds fifty-five (55) feet (16.76 meters) in length.

(5) One (1) trail escort **shall be[**~~is~~**]** required for:

(a) A vehicle and load with a width exceeding twelve (12) feet (3.66 meters) that does not maintain a speed of forty-five (45) miles per hour (72.42 kilometers per hour) on a highway that is four (4) lanes or wider;

(b) A vehicle and load traveling on a two (2) lane highway at speeds below the posted speed limit on its route; **and**

(c) A vehicle and load with a length of 120 feet or less traveling on a four (4) lane or wider highway.

(6) One (1) lead and one (1) trail escort **shall be[**~~is~~**]** required for:

(a) A vehicle and load with a length in excess of eighty-five (85) feet (25.91 meters traveling on a two (2) lane highway);

(b) A vehicle and load with a width exceeding twelve (12) feet (3.66 meters) on a two (2) lane highway; **and**

(c) A vehicle and load with a length in excess of 120 feet traveling on a four (4) lane or wider highway.[~~(3) On a two (2) lane highway, a vehicle and load with a width in excess of ten (10) feet, six (6) inches (three and two-tenths (3.2) meters) but twelve (12) feet (3.66 meters) or less shall have one (1) lead escort.~~

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

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

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

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

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

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

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

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

~~(8) On a four (4) lane or wider highway:~~

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

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

Section 10. Flag and Sign Requirements for Escort Vehicles. (1)[~~(9)~~] Red or orange fluorescent flags that are a minimum of eighteen (18) inches square (11,612.7 millimeters square) shall be displayed on each vehicle and load operating under the auspices of either an overlength or an overwidth permit.

(a) A vehicle operating overwidth shall display four (4) warning flags**,[**~~,~~**]** one (1) at each of the four (4) corners and if any portion of the load extends beyond the four (4) corners, additional flags shall be displayed at the widest points of the load.

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

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

(a) A warning sign shall be six (6) to eight (8) feet in width stating "OVERSIZE LOAD" in black letters on a yellow background.

(b) The black letters shall be **at least** eighteen (18) inches high (11,612.7 millimeters) with a brush stroke of **at least** one and four tenths (1.4) inches (35.56 millimeters).

(c) A warning sign shall be **displayed[**~~mounted~~**]** on a lead escort vehicle so that it is visible to oncoming traffic.[~~State in black letters using a brush stroke of one and four-tenths (1.4) inches (35.56 millimeters) on a yellow background, "OVERSIZE LOAD";~~

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

(d)[~~(c)~~] A warning sign shall be **displayed at the[**~~fastened~~**]**:

1. **[**~~At the~~**]**Front of the power unit;[~~,~~]

2. **[**~~At the~~**]**Rear[~~end~~] of the towed unit;[~~,~~] or

3. **[**~~At the~~**]**Rear of the load.[~~(11) (a) If the utility equipment, pole, or pipe being transported exceeds fifty-five (55) feet (16.76 meters) in length, a front escort shall accompany the vehicle required to be permitted.~~]

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

(4)(a)[~~(12)(a)~~] The lighting devices and reflectors established in [~~set forth in~~] 49 C.F.R. 393.11 for pole trailers and projecting loads shall be required.[~~(b) A lamp or light shall be used while a vehicle is on or beside a highway.~~]

(b)[~~(c)~~] A front overhang on a combination vehicle shall be prohibited.

(5)[~~(13)~~] As a special provision of the permit and due to safety considerations, the Division of Motor Carriers may require additional escort vehicles, lighting, or warning flags.[~~(14) The provisions of this section shall not apply if the vehicle or equipment is less than twelve (12) feet wide and the vehicle equipment is:~~

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

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

~~(c) Not transporting cargo.~~]

Section 11. House or Building Permits. (1) An application for a permit to move a house or building shall be made on House Moving Application, TC Form 95-310, and submitted to the Division of Motor Carriers via mail, hand delivery, or the motor carrier online permitting system at the Division of Motor Carriers, Transportation Cabinet Building, 200 Mero Street Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4 p.m., or via fax at (502) 564-0992.

(2)(a) House moving permits shall be issued for movements that occur during off-peak traffic hours.

(b) The mover shall furnish all escorts and flagmen required to protect the public.

(3) A **house moving** permit shall not be issued for the movement of a permanent building other than a portable storage unit on a parkway or an interstate highway.

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

(b) Specific restrictions shall be identified on the **house moving permit,[**~~permit~~**]** and deviation from the restrictions shall void the **house moving** permit.

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

Section 13. **Overweight or Overdimensional** Permit Required. Until an authorized **overweight or overdimensional** permit has been issued by the Division of Motor Carriers under the provisions of this administrative regulation and KRS 189.270:

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

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

(3) A manufactured home with a combined length of manufactured home and towing vehicle greater than 120 feet shall not be

towed upon any Kentucky highway. The manufactured home shall not exceed eighty-five (85) feet in length.

Section 14. **Overweight or Overdimensional** Annual Permits. (1)(a) A permit shall not be issued for the movement of an overweight or overdimensional load in excess of sixteen (16) feet in width inclusive of the usual overhang.

(b) Mirrors on a towing vehicle shall not be considered in determining the width of an overweight or overdimensional load.

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

(a) Highway width;

(b) Shoulder width and surface type;

(c) Bridge width and posted weights;

(d) Curves;

(e) Turns to be negotiated;

(f) Construction zones;

(g) Obstructions;

(h) Access control;

(i) Traffic volume; and

(j) Other routes available that may be safer even if not as convenient.

(3) The permit holder shall use the results of the evaluation to determine the safest route available to transport the overweight or overdimensional load.

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

(a) Select a different route; or

(b) Contact the Division of Motor Carriers for approval to move the overweight or overdimensional load over that specific route.

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

(6) Acceptance and use of the annual **overweight or overdimensional** permit shall indicate the permit holder's acceptance of the liability associated with the move.

(7) Moves of overweight or overdimensional loads more than twelve (12) feet wide shall be limited to highways of four (4) or more lanes and to the shortest and best two (2) lane route designated by the Division of Motor Carriers. The cabinet shall deny movements on a route unsuitable for move.[~~(9) The issuance cost of an annual and trip permit shall be that established by KRS 189.270.~~]

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

(a) All approaching traffic shall be stopped; and

(b) All trailing traffic shall be prevented from attempting to pass the overweight or overdimensional load until the load has cleared the bridge and has moved sufficiently to the right to safely allow following traffic to pass.

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

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

(a) The vehicle shall:

1. Not be required to have a permit for overweight or overlength; and

2. Be within the limits of the registration and within axle weight limits.

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

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

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

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

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

~~(a) Is less than twelve (12) feet wide;~~

~~(b) Is used in part for off-road use; and~~

~~(c) Is not transporting cargo.~~

~~(5)~~] Travel shall not be made in excess of the posted limitations on **a[**~~any~~**]** bridge or other highway structure.

Section 17. Weather Conditions. (1) **A move of an overweight or overdimensional load[**~~Moves of overdimensional loads~~**]** more than twelve (12) feet wide shall not be made on **a[**~~any~~**]** highway if a wind advisory has been issued by the National Weather Service[~~wind velocity exceeds twenty-five (25) MPH~~]; or

(2) If adverse weather conditions or road conditions would cause these moves to be dangerous.

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

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

(a) A manufacturer's statement;

(b) Documented technical data; or

(c) An engineering analysis or its equivalent stating that the braking distance has been met.

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

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

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

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

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

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

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

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

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

~~(a) Issued to a farm equipment dealer; and~~

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

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

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

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

Section 19[~~Section 20~~]. Permits for Sealed, Containerized, Ocean-going Cargo Units. (1) A vehicle moving a sealed, containerized, ocean-going cargo unit shall be eligible for **an overweight or oversized[**~~a~~**]** single trip permit.

(2) A vehicle eligible for **an overweight or oversized[**~~a~~**]** permit shall meet the specifications and limitations established in KRS 189.222 and Section **4[**~~four (4)~~**]** of this administrative regulation.

(3) An applicant for **an overweight or overdimensional[**~~a~~**]** permit shall submit the following to the Division of Motor Carriers:

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

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

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

(4) **An overweight or overdimensional[**~~A~~**]** permit shall be valid for:

(a) One (1) move;

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

(c) Twenty four (24) hour continuous movement during the duration of the **overweight or overdimensional** permit.

(5) **During transit, an operator shall[**~~An operator shall at all times during the move~~**]** have in his or her possession a copy of the documents established in subsection (3)(c) of this section.

Section 20. Denial of **Overweight or Overdimensional** Permit Application. (1) In accordance with 23 C.F.R. 658.17, the Division of Motor Carriers shall deny **an overweight or overdimensional[**~~a~~**]** permit application if:

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

(b) The load is divisible.

(2) The Transportation Cabinet shall deny or restrict **an overweight or overdimensional[**~~a~~**]** permit for the use of **a[**~~any~~**]** route if it is detrimental to public safety or convenience. The Transportation Cabinet shall consider the following while making a determination on the application:

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

(b) Traffic congestion on the route;

(c) Horizontal and vertical clearance on[~~alignment of~~] the route;

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

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

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

(g) **A[**~~Any other~~**]** condition that would unduly compromise public safety and convenience.

Section 21. Incorporation by Reference. (1) The following material is incorporated by reference:

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

(b) "**House[**~~Housing~~**]** Moving Application", TC Form 95-310, November 2007;[~~\~~]

(c) "Kentucky Overweight or Overdimensional Permit Worksheet", TC Form 95-10**, February 2011[**~~August, 2010~~**]**.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Motor Carriers, Transportation Cabinet Building, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4 p.m.

THOMAS O. ZAWACKI, Commissioner
MIKE HANCOCK, Secretary

APPROVED BY AGENCY: January 12, 2012

FILED WITH LRC: January 12, 2012 at 4 p.m.

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

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
(As Amended at ARRS, May 8, 2012)

601 KAR 1:019. Overweight or overdimensional farm equipment.

RELATES TO: KRS **189.222,** 189.270**,[**~~(3); and~~**]**(4), 281.010(1)

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189.271(9)(b) **authorizes[**~~requires~~**]** the cabinet to promulgate administrative regulations establishing the requirements to issue a permit for the movement of a divisible or nondivisible load exceeding legal weights and dimensions. KRS 189.270(6) requires the cabinet to establish safety requirements for the escort vehicles accompanying an overweight or overdimensional vehicle. This administrative regulation establishes the requirements for the issuance of single and annual permits for overweight and overdimensional farm equipment. This administrative regulation establishes the safety requirements for escort vehicles accompanying farm equipment **and[**~~. This administrative regulation also~~**]** exempts certain farm equipment movements from the requirement of obtaining an over-dimensional permit, but retains the associated safety requirements.

Section 1. Definitions. (1) "Convoy" means multiple pieces of farm equipment moving in a continuous stream and travelling together for safety and convenience.

(2) "Farm equipment" means machinery, an implement, or a vehicle used exclusively in a farm or agriculture operation including non registered **self-propelled[**~~self propelled~~**]** farm equipment.

(3) **[**~~"Farm supplies" means supplies, materials, or equipment necessary to carry out a farming operation engaged in the production of agricultural crop products, meats, livestock, or poultry.~~

~~(4)~~**]** "Fully controlled access highway" **means a highway that:**

(a) Gives preference to through traffic;

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

(c) Has no highway grade crossing or intersection[~~is defined by 601 KAR 1:018, Section 1~~**]**.

(4) "Nondivisible load" means a load or vehicle, that if separated into smaller loads or vehicles would:

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

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

(c) Require more than eight (8) work hours to dismantle using appropriate equipment[~~(5) "Non divisible" is defined by 601 KAR 1:018, Section 1~~**]**.

(5)[~~(6)~~**]** "Overdimensional" **means the motor vehicle exceeds the dimension limits established in 603 KAR 5:070[**~~is defined by 601 KAR 1:018, Section 1~~**]**.

(6)[~~(7)~~**]** "Overweight" **means the motor vehicle exceeds:**

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

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

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

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

(e) The gross weight limit posted at a bridge or other structure[~~is defined by 601 KAR 1:018, Section 1~~**]**.

(7) "Self-propelled[~~(8) "Person" is defined by KRS 281.010(1).~~

~~(9) "Self propelled~~**]** farm equipment" means a non registered vehicle used exclusively in a farm or agricultural operation that is capable of movement on its own power.

(8)[~~(10)~~**]** "Toll road" **means any project constructed under the provisions of KRS 175.450 or 177.390 through 177.570 on which a toll is collected or was in the past collected by the Transportation Cabinet[**~~is defined by 601 KAR 1:018, Section 1~~**]**.

Section 2. **Overweight or Overdimensional** Permit Not Re-

quired. (1) **An overweight or overdimensional[**~~A~~**]** permit shall not be required for the transport of overweight or overdimensional farm equipment**[**~~,~~**]** or **self-propelled[**~~self propelled~~**]** farm equipment from:

(a) One farm to another;

(b) A farm to a repair shop or dealer; or

(c) A repair shop or dealer to a farm.

(2) A non permitted move shall comply with the safety requirements of this administrative regulation.

Section 3. **Overweight or Overdimensional** Annual or Single Trip Permit Required. (1) An **overweight or overdimensional** annual or single trip permit shall be required if a move is from a:

(a) Manufacturer to a dealer;

(b) Dealer to a manufacturer; or

(c) Dealer to a dealer.

(2) An **overweight or overdimensional** annual or single trip permit shall be required for the movement of farm equipment on:

(a) A fully controlled access highway;

(b) A toll road parkway; **or**

(c) An interstate highway.

(3) The cabinet shall consider the following **to make[**~~when making~~**]** the determination on **an overweight or overdimensional[**~~a~~**]** single or annual permit application:

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

(b) Traffic congestion on the route;

(c) Horizontal and vertical clearance on the route;

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

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

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

(g) **Another[**~~Any other~~**]** condition that would unduly compromise public safety and convenience.

Section 4. **Overweight or Overdimensional** Single Trip Permits. (1)(a) **An overweight or overdimensional[**~~A~~**]** single trip permit **shall[**~~may~~**]** be issued for the movement of farm equipment or self propelled farm equipment if a load is non divisible farm equipment exceeding the weight or dimensions established in KRS 189.222 or 189.270(3) and (4). **The cabinet shall restrict the movement or deny the overweight or overdimensional permit if the movement may cause damage to property or may be detrimental to public safety or convenience.**

(2) The permit fee for the cabinet to issue **an overweight or overdimensional[**~~a~~**]** single trip permit shall be as established in KRS 189.270(2).

(3)**(a)** An applicant for an overweight or overdimensional single trip permit shall submit to the Division of Motor Carriers a completed Kentucky Overweight or Overdimensional Permit Worksheet, TC Form 95-10.

(b) An application received after 3 p.m., Eastern standard time, shall not be processed until the following business day.

Section 5. **Overweight or Overdimensional** Annual Permits. (1) An **overweight or overdimensional** annual permit **shall[**~~may~~**]** be issued by the cabinet for the movement of farm equipment or self propelled farm equipment as established in KRS 189.270(3) and (4).

(2) The permit fee for the cabinet to issue an **overweight or overdimensional** annual permit shall be as established in KRS 189.270(3) and (4).

(3) An applicant for an overweight or overdimensional annual permit shall submit to the Division of Motor Carriers a completed Application for Annual Overweight or Overdimensional Permit, TC Form 95-25.

Section 6. **Overweight or Overdimensional** Permits for **Self-propelled Farm Equipment[**~~self propelled farm equipment~~**]**. (1) **Self-propelled[**~~Self propelled~~**]** farm equipment shall not operate on a:

(a) Toll road;

(b) Parkway; or

(c) Interstate highway.

(2) **Self-propelled[**~~Self propelled~~**]** farm equipment shall be issued **an overweight or overdimensional[**~~a~~**]** single trip or annual permit to operate on a fully-controlled access highway if the movement:

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

(b) Is accompanied by **the applicable escort vehicle, if required,[**~~escorts~~**]** as established in Section 7 of this **administrative** regulation.

Section 7. Escort Vehicles for Farm Equipment. **(1) General escort vehicle requirements.**

(a) A lead escort vehicle operating on a two (2) lane highway may serve as a tow vehicle.

(b) The distance requirement for an escort vehicle to lead or trail an overweight or overdimensional farm equipment shall be 300 feet (91.44 meters), but the distance may vary if necessary due to safety or road conditions.

(c) An escort vehicle shall keep its headlights on during an escort.

(d) A single vehicle and load that do not exceed forty-five (45) miles per hour operating on a four (4) lane highway shall have at least one (1) trail escort.

(2) A single vehicle and load in excess of twelve (12) feet in width:

(a) Operating on a two (2) lane highway, shall have at least one (1) lead escort vehicle; and

(b) Operating on a four (4) lane highway, shall have at least one (1) trail escort vehicle.

(3) A single vehicle and load in excess of eighty-five (85) feet in length operating on a two (2) lane highway, shall have at least one (1) lead vehicle.

(4) A single vehicle and load 120 feet in length or more operating on a four (4) lane highway, shall have at least one (1) trail vehicle.

(5) Convoy. More than one (1) farm equipment vehicle and load, exceeding twelve (12) feet in width or exceeding[~~each in excess of twelve (12) feet in width or~~**] eighty-five (85) feet in length, being operated as a convoy on a two (2) lane highway, shall have at least one (1) lead vehicle for the total convoy.[**~~(1) One (1) lead escort vehicle is required for a move on a two (2) lane highway where the length of vehicle and load exceed seventy-five (75) feet but is not more than eighty-five (85) feet.~~

~~(2) A lead escort may tow farm equipment or farm supplies on a two (2) lane or secondary route.~~

~~(3) One (1) trail escort is required for:~~

~~(a) A move on a four (4) lane highway where the vehicle and load do not exceed forty-five (45) miles per hour;~~

~~(b) A move on a four (4) lane or wider highway where the width of the vehicle and load exceed twelve (12) feet;~~

~~(c) A move on a four (4) lane or wider highway where the vehicle and load have a length of 120 feet.~~

~~(4) One (1) lead and one (1) trail escort is required for:~~

~~(a) A move on a two (2) lane highway where the width of the farm equipment and load exceed twelve (12) feet.~~

~~(b) A move on a two (2) lane highway where the length of the farm equipment and load exceed eighty-five (85) feet;~~

~~(c) A move on a four (4) lane or wider highway where the length of the farm equipment and load are 120 feet.~~

~~(d) A movement of farm equipment travelling in a convoy.~~**]**

Section 8. Sign, Flag, and Lighting Requirements. **An overweight or overdimensional vehicle or its escort shall bear a sign declaring that the vehicle is oversized or shall use lights, flashers, or flags.**

(1) Signage. A sign shall:

(a) Be at least six (6) to eight (8) feet in width;

(b) State "Oversize Load";

(c) Have black letters on a yellow background. The black letters shall be at least eighteen (18) inches tall (11,612.7 millimeters) with a brushstroke of at least one and four-tenths (1.44) inches (35.56 millimeters) wide; and

(d) Be displayed so that the sign shall be visible to traffic.

(2) Flags. A flag shall be:

(a) Red or fluorescent orange;

(b) At least eighteen (18) inches (11,612.7 millimeters)

square;

(c) Displayed at the widest point of the load or on the escort vehicle.

(3) Lights.

(a) Lights shall be:

1.a. Amber oscillating; or

b. Flashing; and

2. Visible from the rear.[~~(1) The distance requirement for escort vehicles that accompany overdimensional farm equipment shall be as established in 601 KAR 1:018, unless due to safety or road conditions the escort vehicle is required to travel at a distance closer or farther away from the farm equipment it accompanies.~~

~~(2) The provisions of this section shall apply to farm equipment that exceeds twelve (12) feet in width.~~

~~(3) An escort vehicle shall display a warning sign six (6) to eight (8) feet in width stating "OVERSIZE LOAD" in black letters on a yellow background.~~

~~(4) The black letters shall be eighteen (18) inches high (11,612.7 millimeters) with a brush stroke of one and four tenths (1.4) inches (35.56 millimeters).~~

~~(5) A warning sign shall be mounted on an escort vehicle so that it is visible to oncoming traffic.~~

~~(6) An escort vehicle shall have amber oscillating or flashing lights and keep its headlights on at all times.~~

~~(7) A farm implement whose width exceeds twelve (12) feet shall display:~~

~~(a) Amber oscillating or flashing lights visible from the rear; and~~

~~(b) Flags displayed at the widest points of the load.~~

~~(8) A flag shall be:~~

~~(a) Red or fluorescent orange; and~~

~~(b) Eighteen (18) inches (11,612.7 millimeters) square.~~**]**

Section 9. Travel Restrictions. (1)**[**~~The travel restrictions for overweight and overdimensional loads established in 601 KAR 1:018 Section (2) shall apply to the movement of farm equipment and farm implements with the following exceptions:~~

~~(a) Farm equipment or a farm implement that is less than twelve (12) feet wide;~~

~~(b) Farm equipment or a farm implement that is used in part for off-road use; and~~

~~(c) Farm equipment that is not transporting cargo.~~

~~(2)~~**]** The movement of farm equipment or **self-propelled[**~~self propelled~~**]** farm implements in excess of twelve (12) feet in width shall not be made on a highway if adverse weather or road conditions will cause the move to be dangerous. **[**~~(3) As a special provision of the permit, the Department of Vehicle Regulation may require additional escort vehicles, lighting, or warning flags.~~**]**

Section 10. Height and Weight Requirements. (1) **A nonexempt farm vehicle and load with a height in excess of thirteen (13) feet, six (6) inches shall obtain a single-trip overweight or overdimensional permit pursuant to KRS 189.270(2) prior to movement.**

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

(3) Gross or axle overweight shall not be permitted on a nonexempt farm vehicle with the following configuration:

(a) A combination unit of less than five (5) axles; or

(b) A single unit.

(4) To be issued an overweight or overdimensional permit, a vehicle shall have a declared gross weight of at least 80,000 pounds.

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

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

(b) Steering axle: 20,000 pounds;

(c) Tandem dual-wheel axle group if the combination vehicle has only five (5) axles total: 45,000 pounds;

(d) Tandem dual-wheel axle group if the combination vehicle has six (6) or more axles total: 48,000 pounds;

(e) Tridem dual-wheel axle group: 60,000 pounds;

(f) Five (5) axle combination units not exceeding 96,000 pounds gross weight;

(g) Six (6) axle combination units not exceeding 120,000 pounds gross weight;

(h) Seven (7) axle combination units not exceeding 160,000 pounds gross weight; or

(i) Trunnion axle group maximum gross weight as determined by the bridge weight formula established in 603 KAR 5:066, Section 2(7).

(6) The maximum weight shall not be permitted, unless all bridges and roads on the moving route have sufficient capacity to accommodate the load.[~~Height requirements for farm equipment shall be as established in 601 KAR 1:018 Section 3(1) and~~

~~(2). Weight requirements for farm equipment shall be as established in 601 KAR 1:018 Section 4.~~**]**

Section 11. Responsibility of **the Overweight or Overdimensional** Permit Holder. (1)**(a) Damage to the highway, signs, guardrails, or other public or private property caused by the transportation of the farm equipment shall be the responsibility of the overweight or overdimensional permit holder.**

(b) An overweight or overdimensional permit holder shall either repair the damage incurred or pay for the repair.

(c) An overweight or overdimensional permit holder shall not cut, trim, remove, or relocate a tree, shrub, guardrail highway sign, or other object on the highway right-of-way without the written approval of the chief district engineer or designee in the district office where the property is physically located.

(2) An applicant shall be responsible for providing accurate information and reviewing the permit prior to travel on Kentucky highways[~~The Responsibility of a permit holder for a permit issued for farm equipment shall be as established in 601 KAR 1:018 Section 5~~**]**.

Section 12. Duplicate **Overweight or Overdimensional** Permits. (1) A duplicate **overweight or overdimensional permit that is needed to replace a lost, stolen, or destroyed annual permit or to transfer the permit to another towing vehicle, shall be obtained from the Division of Motor Carriers by a payment of ten (10) dollars.**

(2) One (1) transfer to another towing vehicle shall be allowed for each annual overweight or overdimensional permit during the permit's effective year.

(3) An additional transfer of an annual overweight or overdimensional permit shall be subject to the fees established in KRS 189.270.

(4) An original overweight or overdimensional permit shall be returned to the Division of Motor Carriers prior to the transfer of an annual overweight or overdimensional permit.[~~permit shall be obtained as established in 601 KAR 1:018 Section 7.~~**]**

Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Annual Overweight or Overdimensional Permit", TC Form 95-25, December**[**~~,~~**]** 2011; and

(b) "Kentucky Overweight or Overdimensional Permit Worksheet", TC Form 95-10, December**[**~~,~~**]** 2011.

(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/.

THOMAS O. ZAWACKI, Commissioner

MIKE HANCOCK, Secretary

APPROVED BY AGENCY: December 5, 2011

FILED WITH LRC: December 5, 2011 at 3 p.m.

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

EDUCATION CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, May 8, 2012)

702 KAR 7:065. Designation of agent to manage high school interscholastic athletics.

RELATES TO: KRS 156.070(2)
STATUTORY AUTHORITY: KRS 156.070(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070(2) requires the Kentucky Board of Education (KBE) to manage and control the common schools, including interscholastic athletics in the schools, and authorizes the KBE to designate an agency to manage athletics. This administrative regulation designates an agent for high school athletics; establishes the financial planning and review processes for the agent; and incorporates by reference the bylaws, procedures and rules of the agent.

Section 1. The Kentucky High School Athletic Association (KHSAA) shall be the Kentucky Board of Education's agent to manage interscholastic athletics at the high school level in the common schools, including a private school desiring to associate with KHSAA and to compete with a common school.

Section 2. To remain eligible to maintain the designation as the agent to manage interscholastic athletics, the KHSAA shall:
(1) Accept four (4) at-large members appointed by the Kentucky Board of Education to its governing body;
(2) Sponsor an annual meeting of its member schools;
(3) Provide for each member school to have a vote on constitution and bylaw changes submitted for consideration;
(4) Provide for regional postseason tournament net revenues to be distributed to the member schools in that region participating in that sport, utilizing a share approach determined by the schools within that region playing that sport;
(5) Require its governing body to annually establish goals and objectives for its commissioner and perform a self-assessment and submit the results annually to the KBE by October 31;
(6) Advise the Department of Education of all legal action brought against the KHSAA by October 31;
(7) Permit a board of control member to serve a maximum of two (2) consecutive four (4) year terms with no region represented for more than eight (8) consecutive years;
(8) Employ a commissioner and evaluate that person's performance annually by October 31, and establish all staff positions upon recommendation of the commissioner;
(9) Permit the commissioner to employ other personnel necessary to perform the staff responsibilities;
(10) Permit the Board of Control to assess fines on a member school;
(11) Utilize a trained independent hearing officer instead of an eligibility committee for an appeal;
(12) Establish a philosophical statement of principles to use as a guide in an eligibility case;
(13) Conduct field audits of the association's entire membership over a five (5) year period regarding each school's compliance with 20 U.S.C. Section 1681 (Title IX) and submit summary reports including the highlighting of any deficiencies in compliance on a regular (not less than three (3) times annually) basis to the Kentucky Board of Education as requested;
(14) As a condition precedent to membership, require each member school and superintendent to annually submit a written certification of compliance with 20 U.S.C. Section 1681 (Title IX);
(15) Conduct all meetings in accordance with KRS 61.805 through 61.850;
(16) Provide written reports of any investigations into possible violations of statute, administrative regulation, KHSAA Constitution, bylaws, and other rules governing the conduct of interscholastic athletics conducted by KHSAA or their designees to the superintendent and principal of the involved school district and school prior to being made public: and
(17) Not punish or sanction, in any manner, a school, student, coach, or administrator for allowing a student to play in an athletic contest or practice with the team during a time when an order of a court of competent jurisdiction permits the student to participate or otherwise stays or enjoins enforcement of a KHSAA final decision on eligibility.

Section 3. Financial Planning and Review Requirements. (1) KHSAA shall annually submit the following documents to the KBE by October 31:
(a) Draft budget for the next two (2) fiscal years, including the current year;
(b) End-of-year budget status report for the previous fiscal year;
(c) Revisions to the KHSAA Strategic Plan as a result of an annual review of the plan by the KHSAA governing body;
(d) A summary report of operations including summaries of financial, legal, and administrative actions taken and other items ongoing within KHSAA. This report shall also include a summary of items affecting:
1. Athletic appeals and their disposition including the name of the individual, grade, school, and the action taken by KHSAA;
2. Eligibility rules;
3. Duties of school officials;
4. Contests and contest limitations;
5. Requirements for officials and coaches; and
6. Results of a biennial review of its bylaws that results in a recommendation for a change, directing any proposals for change in association rules to be considered for vote by the member schools at the next legislative opportunity; and
(e) A review of all items which have been submitted to the membership for approval through the processes established in the KHSAA Constitution and the result of the voting on those issues.
(2) The KHSAA shall annually submit by December 31, audited financial statements with the KHSAA Commissioner's letter addressing exceptions or notes contained in management correspondence, if any.

Section 4. The materials incorporated by reference in Section 5 shall apply to high school interscholastic athletics in Kentucky.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "KHSAA Constitution", 4/2009;
(b) "KHSAA Bylaws", **5/2012**[~~3/2012~~];[~~4/2011;~~]
(c) "KHSAA Due Process Procedure", **5/2012**[~~3/2012~~];[~~4/2009;~~]
(d) "KHSAA Board of Control Policies", **5/2012**[~~3/2012~~];[~~4/2011;~~]
(e) "KHSAA Officials Division Guidebook", **5/2012**[~~3/2012~~];[~~4/2011;~~]
(f) "KHSAA Form BA101- Baseball Pitching Limitation", 4/2009;
(g) "KHSAA Form FB102- Football Financial Report", 9/7/2009;
(h) "KHSAA Form FB103- Football Spring Football Practice", 4/2011;
(i) "KHSAA Form FB109- Football Scrimmage Report", 7/2009;
(j) "KHSAA Form FB122- Football Contact Practice Log", 6/2009;
(k) "KHSAA Form GE1- Membership Renewal", **5/2012**[~~3/2012~~];[~~5/2011;~~]
(l) "KHSAA Form GE2- New Membership Application", **5/2012**[~~3/2012~~];[~~5/2011;~~]
(m) "KHSAA Form GE3- Participation List", 4/2009;
(n) "KHSAA Form GE4- Physician & Parental Permission Form", **5/2012**[~~3/2012~~];[~~4/2009;~~]
(o) "KHSAA Form GE6- Domestic Transfer", 3/2012;[~~5/2011;~~]
(p) "KHSAA Form GE7- Non Domestic Eligibility", 3/2012;[~~5/2011;~~]
(q) "KHSAA Form GE14- Contract for Athletic Contests", 4/2009;
(r) "KHSAA Form GE16- Statutory Waiver of Bylaw 3", 3/2012;[~~5/2011;~~]
(s) "KHSAA Form GE18- Survey for Sports Offerings", 3/2012;[~~5/2011;~~]
(t) "KHSAA Form GE19-Title IX Procedures Verification", 5/2011;
(u) "KHSAA Form GE20- Heat Index Record", 4/2009;

(v) "KHSAA Form GE26- Financial Aid Report", 5/2011;
(w) "KHSAA Form GE35- Waiver - 20 Day Notice", 5/2011;
(x) "KHSAA Form GE36- Add. Info for Appeal", 5/2011;
(y) "KHSAA Form GE39- Report of Need Based Financial Aid Awarded", 5/2011;
(z) "KHSAA Form GE40- Request for a Statutory Waiver of Bylaw 27", 2/2012;
(aa) "KHSAA Form GE52- District Tournament Financial Report", 5/2011;
(bb)[~~(aa)~~] "KHSAA Form GE53- Region Tournament Financial Report", 3/2012;[~~5/2011;~~]
(cc)[~~(bb)~~] "KHSAA Form GE69- Waiver – 15 Day Exceptions", 5/2011;
(dd)[~~(cc)~~] "KHSAA Form SO103- Soccer Section/SubSection Financial Report", 5/2011;
(ee)[~~(dd)~~] "KHSAA Form T1- Title IX Accom. Of Interests & Abilities", 5/2011;
(ff)[~~(ee)~~] "KHSAA Form T2- Title IX Accom. Of Interests & Abilities", 5/2011;
(gg)[~~(ff)~~] "KHSAA Form T3- Title IX Accom. Of Interests & Abilities", 5/2011;
(hh)[~~(gg)~~] "KHSAA Form T35- Title IX Actual Expenditures Comparison 1 + Booster Club", 5/2011;
(ii)[~~(hh)~~] "KHSAA Form T36- Title IX Actual Expenditures Comparison 2 + Booster Club", 5/2011;
(jj)[~~(ii)~~] "KHSAA Form T4- Title IX Accom. Of Interests & Abilities", 5/2011;
(kk)[~~(jj)~~] "KHSAA Form T41- Title IX Athletics Audit Checklist", 5/2011;
(ll)[~~(kk)~~] "KHSAA Form T50- [~~Title IX~~] Title IX Re-Visit ", 5/2011;
(mm)[~~(ll)~~] "KHSAA Form T60- Title IX Corrective Action", 5/2011;
(nn)[~~(mm)~~] "KHSAA Form T61- Title IX Interscholastic Athletics Student Survey", 5/2011;
(oo)[~~(nn)~~] "KHSAA Form T63- Title IX Interscholastic Athletics Survey", 5/2011;
(pp)[~~(oo)~~] "KHSAA Form T70- Title IX Participation Opportunities", 5/2011;
(qq)[~~(pp)~~] "KHSAA Form T71- Title IX Benefits - Summary 1", 5/2011;
(rr)[~~(qq)~~] "KHSAA Form T72- Title IX Benefits - Summary 2", 5/2011;
(ss)[~~(rr)~~] "KHSAA Form T73- Title IX Re-Visit - Publicity Support Group", 5/2011;
(tt)[~~(ss)~~] "KHSAA Form T74- Title IX Re-Visit – Corrective Action Summary Chart", 5/2011;
(uu)[~~(tt)~~] "KHSAA Form WR101- Wrestling Permission Form", 12/2009;
(vv)[~~(uu)~~] "KHSAA Form WR111- Wrestling Skin Condition & Unconscious", 5/2011; and
(ww)[~~(vv)~~] "KHSAA Form WR126- Wrestling Weight Certif. Program Assessor", 3/2012.[~~9/2009.~~]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Legal and Legislative Services, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

TERRY HOLIDAY, PH.D., Commissioner
DAVID KAREM, Chairperson
APPROVED BY AGENCY: March 14, 2012
FILED WITH LRC: March 15, 2012 at noon
CONTACT PERSON: Kevin C. Brown, General Counsel, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone 502/564-4474, fax 502/564-9321 or email at kevin.brown@education.ky.gov.

GENERAL GOVERNMENT CABINET
Kentucky Board of Home Inspectors
(As Amended at ARRS, May 8, 2012)

815 KAR 6:010. Home inspector licensing requirements and maintenance of records.

RELATES TO: KRS 198B.700, 198B.706, 198B.712, 198B.714, 198B.716, 198B.722, 198B.724**, 198B.738**[~~, EO 2009-535~~]
STATUTORY AUTHORITY: KRS 198B.706, 198B.722**[**~~(7)~~**]**[~~, EO 2009-535~~]
NECESSITY, FUNCTION**,** AND CONFORMITY: KRS 198B.706(1) and (15) require the Kentucky Board of Home Inspectors to promulgate administrative regulations necessary to enforce the provisions of KRS 198B.700 to 198B.738 and to establish requirements for licensing and certification as well as prescribing forms and applications. KRS 198B.706(7) requires the board to **promulgate administrative regulations to provide for the inspection of[**~~inspect~~**]** the records of a licensee. KRS 198B.706(11) requires the board to establish continuing education requirements. KRS 198B.722 requires the board to **establish[**~~set the~~**]** requirements for renewal of licenses and authorizes the board to establish an inactive license.[~~EO 2009-535, effective June 12, 2009, reorganized the Office of Housing, Buildings and Construction as the Department of Housing, Buildings and Construction, and established the commissioner, rather than executive director, as the head of the department.~~] This administrative regulation establishes the licensure and record requirements for home inspectors.

Section 1. Definitions. (1) "Applicant" is defined by KRS 198B.700(1).
(2) "Board" is defined by KRS 198B.700(2).
(3) "Contact hour" means fifty (50) minutes of instruction, exclusive of **[**~~any~~**]**breaks, recesses, or other time not spent in instruction.
(4)~~(3)~~ "Licensee" is defined by KRS 198B.700**(7)[**~~(8)~~**]**.

Section 2. Application Requirements. (1) An applicant for a home inspector license shall submit the following:
(a) A completed Application for **[**~~Initial~~**]**Licensure as a Kentucky Home Inspector, Form KBHI 1;
(b) A **two (2) inch by two (2) inch[**~~2 in. x 2 in.~~**]** passport photograph affixed to the application form;
(c) A certificate of course completion and the applicant's national examination test score;
(d) A certificate of insurance;
(e) If applicable, other state or local licensure, certification, registration, or permit;
(f) A report with the results of the state-wide background check; and
(g) A nonrefundable fee of $250.
(2) An applicant for a home inspector license shall:
(a) Complete and pass a board-approved, prelicensing training course administered by a provider who has been approved by the board in accordance with 815 KAR 6:040 and subsection (8) of this section; and
(b) Pass an examination conducted by a board-approved test provider.
(3) A request to sit for the examination shall be made directly to the test provider.
(4) The examination fee shall be set by the testing company and shall be paid directly to the test provider.
(5) A passing score on the examination shall be valid for a period of three (3) years.
(6) Failing the examination.
(a) An applicant who fails to pass the examination two (2) times shall wait at least fourteen (14) calendar days from the date of the second failed examination prior to retaking the examination.
(b) An applicant who fails to pass the examination three (3) or more times shall wait at least thirty (30) calendar days from the date of the third or subsequent failed examination failed examination prior to retaking the examination.
(c) An applicant who fails to pass the examination three (3)

times shall not be eligible to retake the examination until the applicant has again completed and again passed the prelicensing training course required by **subsection (2)(a) of this section[**~~Section 2(2)(a) of this administrative regulation~~**]** before retaking the examination a fourth **[**~~(4th)~~**]**time, and also for each subsequent examination failure thereafter.

(7) Procedures and conduct.

(a) The applicant shall follow:

1. Procedures and appropriate conduct established by the board or testing service administering an examination if the procedures and conduct requirements are provided or made available to each applicant or orally announced before the start of the examination; and

2. Written instructions communicated prior to the examination date and **[**~~any~~**]**instructions communicated at the testing site, either written or oral, on the date of the examination.

(b) Failure to comply with all procedures established by the board or the testing service with regard to conduct at the examination shall be grounds for denial of the application.

(8) Course requirements. To be approved by the board, a prelicensing training course shall require a minimum of:

(a) Sixty-four (64) credit hours of training in the following subject areas for at least the number of hours specified:

1. Manufactured housing: three (3) hours;

2. Standards of practice, **KRS Chapter 198B and 815 KAR Chapter 6[**~~licensing law and administrative regulations~~**]**, contracts, report writing, and communications: eleven (11) hours;

3. Exterior, roofing, insulation, and ventilation: six (6) hours;

4. Structure and interior: nine (9) hours;

5. Electrical and plumbing: nine (9) hours;

6. Heating and air conditioning: six (6) hours;

7. Field training: sixteen (16) hours, including not more than eight (8) hours in a laboratory;

8. General residential construction: three (3) hours; and

9. Environmental hazards, mitigation, water quality, and indoor air quality: one (1) hour;

(b) The completion of three (3) unpaid home inspections with satisfactory written reports submitted to the course provider in addition to the sixteen (16) hours of field training required by paragraph (a)7 of this subsection; and

(c) An exit examination with a passing score.

(9) Criminal background checks and other disciplinary proceedings.

(a) Each applicant shall undergo a state-wide criminal background check administered by a law enforcement agency capable of conducting a state-wide background check and submit the results of the check along with the applicant's application.

(b) If an applicant has resided in a state for less than five (5) years prior to application, the applicant shall also obtain and submit a state-wide criminal background check by a law enforcement agency capable of conducting a state-wide background check from the state where the applicant previously resided.

(c) The board **shall[**~~may~~**]** deny or refuse to renew a license to an applicant or licensee **based on the seriousness of the offense, the length of time since the offense, and the applicant's or licensee's showing of remorse, rehabilitation, and restitution by clear and convincing evidence,** who:

1. Has pleaded guilty to or has been convicted of a:

a. Felony; **or**

b. Misdemeanor[~~involving theft or dishonesty; or~~

~~c. Sex offense~~]; or

2. Has had disciplinary action taken against a professional license, certificate, registration, or permit held by the applicant or licensee in any jurisdiction or state, including Kentucky.

Section 3. Reciprocity. An applicant seeking a license through reciprocity in accordance with KRS 198B.714 shall:

(1) Submit a completed Application for **[**~~Initial~~**]**Licensure as a Kentucky Home Inspector, Form KBHI 1, and attachments established in Section 2(1)(b) through (f) of this administrative regulation;

(2) Pay a nonrefundable fee of $250; and

(3) Meet the conditions of KRS 198B.714(1).

Section 4. Nonresident Licensees. A nonresident licensee shall:

(1) Submit a completed Application for **[**~~Initial~~**]**Licensure as a Kentucky Home Inspector, Form KBHI 1, and attachments established in Section 2(1)(b) through (f) of this administrative regulation;

(2) Pay the fee established in Section **2(1)(g)[**~~2(1)(b)~~**]** of this administrative regulation; and

(3) Comply with the provisions **established[**~~set forth~~**]** in KRS 198B.716 and this administrative regulation.

Section 5. Renewal of Licenses. In addition to the requirements **established[**~~set forth~~**]** in KRS 198B.722, to renew a license, the licensee shall:

(1) Satisfy the continuing education requirements of Section **6[**~~7~~**]** of this administrative regulation;

(2) Pay a nonrefundable renewal fee of $200[~~$250~~] per year for each license that expires on or after July 1, 2012, to and including June 30, 2014**; or[**~~, or;~~**]**

(3) Pay a nonrefundable renewal fee of $250 per year for each license that expires on or after July 1, 2014;

(4)[~~(3)~~] Submit a fully-completed Application for Renewal **Licensure as a[**~~of~~**]** Kentucky Home Inspector**[**~~License~~**]**, Form KBHI 2 and attachments, including:

(a) A certificate of completion for continuing education;

(b) A certification of insurance information;

(c) If applicable, other state or local licensure, certification, registration, or permit; and

(d) A state-wide criminal background check; and

(5)[~~(4)~~] Submit a copy of a completed inspection report that has been compiled within the previous twelve (12) months immediately preceding renewal.

Section 6. Continuing Education. (1) The continuing education requirements of this section shall apply only to those licensees who will have been licensed at least twelve (12) months at license renewal.

(2) Each licensee shall be required to have at least fourteen (14) hours of continuing education per license year.

(3) Prior to **[**~~any~~**]**renewal, the continuing education shall include a minimum of the following:

(a) Three (3) hours in manufactured housing;

(b) Three (3) hours in **KRS Chapter 198B and 815 KAR Chapter 6[**~~Kentucky laws and administrative regulations~~**]**; and

(c) Eight (8) hours in technical courses, including identification, determination, and report writing as applicable within the standards of practice**.**

(4) Continuing education shall be obtained from those providers approved by the board as provided in 815 KAR 6:040.

(5) An approved prelicensing course shall to satisfy the initial fourteen (14) hour continuing education requirement.

(6) A maximum of three (3) hours per license year shall be awarded for teaching part of a home inspection credit course or home inspection continuing education course as applied to the appropriate content area **established in subsection (3)(a) through (c) of this section[**~~set forth in Section 3(a)-(c) of this administrative regulation~~**].**

(7) A maximum of three (3) hours per license year shall be awarded for appointment to the board for a board member who is licensed and who has attended not less than eighty percent (80) percent of the board meetings each license year as applied to the content area **established in subsection (3)(b) of this section[**~~set forth in Section 3(b) of this administrative regulation~~**].**

Section 7. Inactive License. (1) Placement of a license in inactive status.

(a)1. To place a license in inactive status, a licensee shall submit a notarized statement indicating the desire to have the license placed in inactive status.

2. This notarized statement shall be mailed to the board and shall be accompanied by the following:

a. A check for ten (10) dollars made payable to the Kentucky State Treasurer;

b. The actual license card of the licensee; and

c. A current mailing address for the licensee.

(b) Licensees in inactive status shall not engage in **[**~~any~~**]**home inspection activities within the Commonwealth of Kentucky.

(2) Renewal of license in inactive status.

(a) A licensee with an inactive license shall pay an annual inactive status fee equal to fifty (50) percent of the current renewal fee for an active license.

(b) Failure to pay this annual fee shall result in the expiration of the license on the last day of the licensee's birth month.

(3) Insurance coverage for licensees with inactive license. A licensee with an inactive status license shall not be required to maintain the insurance coverage required by KRS 198B.712(3)(d) during inactive status.

Section 8. Reactivation of Inactive License to Active Status. (1) A licensee who wishes to reactivate a license shall contact the board and submit a notarized statement requesting approval to return to active status.

(2) This request shall be accompanied by the following:

(a) The name of the licensee requesting activation;

(b) The license number of the licensee requesting reactivation;

(c) The birth date of the licensee requesting reactivation;

(d) A current mailing address for the licensee requesting reactivation;

(e) A check in the amount of ten (10) dollars made payable to the Kentucky State Treasurer;

(f) Proof of liability insurance naming the individual in the amount of $250,000 as required by KRS 198B.712(3)(d);

(g) A state-wide criminal background check administered by a law enforcement agency capable of conducting a state-wide background check; and

(h) Proof of continuing education as required by Section 9 of this administrative regulation; and

(3) A license that has been inactive for a period of five (5) years from the date of board action shall be considered expired.

Section 9. Continuing Education Requirements for Licensees in Inactive Status Returning to Active Status. A licensee with an inactive status who wishes to reactivate the license shall complete the following continuing education requirements prior to application to return to active status:

(1) Fourteen (14) hours per year that the license has been inactive. This fourteen (14) hours shall include:

(a) Three (3) hours in manufactured housing;

(b) Three (3) hours of **KRS Chapter 198B and 815 KAR Chapter 6[**~~Kentucky law and administrative regulations~~**]**; and

(c) Eight (8) hours, in any combination, of:

1. Electrical;
2. Plumbing;
3. Heating, ventilation**,** and air conditioning;
4. Roofing; or
5. Report writing.

(2) A board approved sixty-four (64) hour prelicensing training course may be used to satisfy this requirement.

Section 10. Maintenance of Records. (1) Address.

(a) A license holder shall report a change of address to the board in writing within ten (10) days after the change.

(b) The board shall not be responsible for the license holder's failure to receive notices, communications, and correspondence caused by the license holder's failure to promptly notify the board of a change of address.

(2) Names.

(a) A license holder shall notify the board in writing of a name change within thirty (30) days of the change.

(b) The notification shall be accompanied by a copy of a marriage certificate, divorce decree, court order, or other documentation that verifies the name change.

(c) The board shall not be responsible for the license holder's failure to receive notices, communications, and correspondence caused by the license holder's failure to promptly notify the board of a name change.

(3) Inspection records.

(a) A licensed home inspector shall retain the following records for **at least[**~~a period of~~**]** three (3) years from the date of the inspection:

1. The written reports;
2. The contract; and
3. Supporting documentation, if applicable.

(b) Records may be retained in retrievable, electronic format.

(c) The licensee shall provide all records requested by the board within ten (10) days of receipt of the request.[~~(d) The licensee shall not destroy any records, if notified by the board that it is requesting the records.~~]

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

(a) "Application for Licensure as a Kentucky Home Inspector", Form KBHI 1, 1-2012[~~August 2009~~]; and

(b) "Application for Renewal **Licensure as a[**~~of~~**]** Kentucky Home Inspector**[**~~License~~**]**", Form KBHI 2, 1-2012[~~August 2009~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601,[~~Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405,~~] Monday through Friday, 8 a.m. to 5[~~4:30~~] p.m.

MARK SCHMIDT, Chair

APPROVED BY AGENCY: April 11, 2012

FILED WITH LRC: April 11, 2012 at 4 p.m.

CONTACT PERSON: Tony Crockett, Board Administrator, Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 564-3296, fax (502) 564-4818.

GENERAL GOVERNMENT CABINET
Kentucky Board of Home Inspectors
(As Amended at ARRS, May 8, 2012)

815 KAR 6:070. Per diem and reimbursement for traveling and other expenses for board members.

RELATES TO: KRS 45.101, **[**~~KRS~~**]**198B.704(17), **[**~~KRS~~**]**198B706(15), **[**~~and KRS~~**]**198B.710(1)-(4)

STATUTORY AUTHORITY: KRS **12.070(5),** 45.101, 198B.704(17)**[**~~, and KRS 12.070(5)~~**]**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.704(17) **requires the board to provide each member[**~~allows each member of the Board to~~**]** a minimum salary of $35.00 per diem and reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties as established **pursuant to[**~~under~~**]** KRS 45.101. This administrative regulation **establishes[**~~sets~~**]** the per diem amount board members receive and provides for reimbursement for **[**~~their~~**]**actual and necessary traveling and other expenses.

Section 1. Each member of the board shall receive:

(1) A per diem of $100.00 for:

(a) Attending each meeting of the board;

(b) Otherwise engaging in the in-person, face-to-face duties of a member of the **board; and[**~~Board as approved by the Board, and;~~**]**

(c) **[**~~Any~~**]**Additional days of travel incidental to and contemporaneous with attending each meeting of the board or engaging in the in-person, face-to-face duties of a member of the board**[**~~as approved by the Board~~**]**.

(2) Reimbursement for **[**~~their~~**]**actual and necessary expenses.

MARK SCHMIDT, Chair,

APPROVED BY AGENCY: January 11, 2012

FILED WITH LRC: January 13, 2012 at noon

CONTACT PERSON: Tony Crockett, Board Administrator, Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-3296, fax (502) 564-4818.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(As Amended at ARRS, May 8, 2012)

921 KAR 2:015. Supplemental programs for persons who are aged, blind, or have a disability.

RELATES TO: KRS 209.020(4), **216.530,** 216.557(1), 216.750(2), 216B.010-216B.131, Chapter 514, 20 C.F.R. 416.120, 416.212, 416.2095, 416.2096, 416.2099, 8 U.S.C. 1621, 1641, 42 U.S.C. 1381-1383

STATUTORY AUTHORITY: KRS 194A.050(1), 205.245, 42 U.S.C. 1382e-g

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the welfare, personal dignity, integrity, and sufficiency of the citizens of the Commonwealth and to operate the programs and fulfill the responsibilities of the cabinet. 42 U.S.C. 1382 authorizes the cabinet to administer a state funded program of supplementation to all former recipients of the Aid to the Aged, Blind and Disabled Program as of December 13, 1973, and who were disadvantaged by the implementation of the Supplemental Security Income Program. KRS 205.245 establishes the mandatory supplementation program and the supplementation to other needy persons who are aged, blind, or have a disability. In addition, any state that makes supplementary payments on or after June 30, 1977, and does not have a pass-along agreement with the U.S. Department of Health and Human Services Commissioner in effect, shall be determined by the commissioner to be ineligible for payments under Title XIX of the Social Security Act in accordance with 20 C.F.R. 416.2099. This administrative regulation establishes the provisions of the supplementation program.

Section 1. Definitions. (1) "Adult" is defined by KRS 209.020(4).

(2) "Aid to the Aged, Blind and Disabled Program" means the former state-funded program for an individual who was aged, blind**,** or had a disability.

(3) "Department" means the Department for Community Based Services or its designee.

(4) "Elder Shelter Network" means a temporary shelter for a victim of elder abuse.

(5) "Full-time living arrangement" means a residential living status that is seven (7) days a week, not part time.

(6) "Qualified alien" means an alien who, at the time the person applies for, receives, or attempts to receive state supplementation, meets the U.S. citizenship requirements of 907 KAR 1:011[~~921 KAR 2:006~~].

(7) "Specialized personal care home" means a licensed personal care home that receives funding from the Department for Behavioral Health, Developmental and Intellectual Disabilities[~~Department for Mental Health, Developmental Disabilities, and Addiction Services~~] to employ a mental health professional who has specialized training in the care of a resident with mental illness or mental retardation.

(8) "Supplemental security income" or "SSI" means a monthly cash payment made pursuant to 42 U.S.C. 1381 to 1383f to the aged, blind, or disabled.

Section 2. Mandatory State Supplementation. (1) A recipient for mandatory state supplementation shall include a former Aid to the Aged, Blind and Disabled Program recipient who became ineligible for SSI due to income but whose special needs entitled the recipient to an Aid to the Aged, Blind and Disabled Program payment as of December 1973.

(2) A mandatory state supplementation recipient shall be subject to the same payment requirements as specified in Section 4 of this administrative regulation.

(3) A mandatory state supplementation payment shall be equal to the difference between:

(a) The Aid to the Aged, Blind and Disabled Program payment for the month of December 1973; and

(b)1. The total of the SSI payment; or

2. The total of the SSI payment and other income for the current month.

(4) A mandatory payment shall discontinue if:

(a) The needs of the recipient as recognized in December 1973 have decreased; or

(b) Income has increased to the December 1973 level.

(5) The mandatory payment shall not be increased unless:

(a) Income as recognized in December 1973 decreases;

(b) The SSI payment is reduced, but the recipient's circumstances are unchanged; or

(c) The standard of need as specified in Section 8 of this administrative regulation for a class of recipients is increased.

(6) If a husband and wife are living together, an income change after September 1974 shall not result in an increased mandatory payment unless total income of the couple is less than December 1973 total income.

Section 3. Optional State Supplementation Program. (1) Except as established in Sections 6, 7, and 8 of this administrative regulation, optional state supplementation shall be available to a person who meets technical requirements and resource limitations of the medically needy program for a person who is aged, blind, or has a disability in accordance with:

(a) 907 KAR 1:011, Sections 1(7), (8), 5(5), (6), (7), (13), 10, and 11;

(b) 907 KAR 1:640, Sections 1(1), (6), (7), (11), 3(4)(a);

(c) 907 KAR 1:645;

(d) 907 KAR 1:650, Section 1(9); and

(e) 907 KAR 1:660, Sections 1(1), (5), 2(1), (2), (3), and (4).

(2) A person shall apply or reapply for the state supplementation program in accordance with 921 KAR 2:035 and shall be required to:

(a) Furnish a Social Security number; or

(b) Apply for a Social Security number, if a Social Security number has not been issued.

(3) If potential eligibility exists for SSI, an application for SSI shall be mandatory.

(4) The effective date for state supplementation program approval shall be in accordance with 921 KAR 2:050.

Section 4. Optional State Supplementation Payment. (1) An optional supplementation payment shall be issued in accordance with 921 KAR 2:050 for an eligible individual who:

(a) Requires a full-time living arrangement;

(b) Has insufficient income to meet the payment standards specified in Section 8 of this administrative regulation; and

(c)1. Resides in a personal care home and is sixteen (16) years of age or older in accordance with 902 KAR 20:036, Section 3(3)(a);

2. Resides in a family care home and is at least eighteen (18) years of age in accordance with 902 KAR 20:041, Section 3(14); or

3. Receives caretaker services and is at least eighteen (18) years of age.

(2) A full-time living arrangement shall include:

(a) Residence in a personal care home that:

1. Meets the requirements and provides services established in 902 KAR 20:036; and

2. Is licensed under KRS 216B.010 to 216B.131;

(b) Residence in a family care home that:

1. Meets the requirements and provides services established in 902 KAR 20:041; and

2. Is licensed under KRS 216B.010 to 216B.131; or

(c) A situation in which a caretaker is required to be hired to provide care other than room and board.

(3) A guardian or other payee who receives a state supplementation check for a state supplementation recipient shall:

(a) Return the check to the Kentucky State Treasurer, the month after the month of:

1. Discharge to a:

a. Nursing facility, unless the admission is for temporary medical care as specified in Section 9 of this administrative regulation; or

b. Residence; or

2. Death of the state supplementation recipient; and

(b) Notify a local county department office within five (5) working days of the death or discharge of the state supplementation recipient.

(4) Failure to comply with subsection (3)(a) of this section may result in prosecution in accordance with KRS Chapter 514.

(5) If there is no guardian or other payee, a personal care or family care home that receives a state supplementation check for a state supplementation recipient shall:

(a) Return the check to the Kentucky State Treasurer, the month after the month of:

1. Discharge to a:

a. Nursing facility, unless the admission is for temporary medical care as specified in Section 9 of this administrative regulation;

b. Another personal care or family care home; or

c. Residence; or

2. Death of the state supplementation recipient; and

(b) Notify a local county department within five (5) working days of the:

1. Death or discharge of the state supplementation recipient; or

2. Voluntary relinquishment of a license to the Office of Inspector General.

(6) If a personal care or family care home receives a state supplementation check after voluntary relinquishment of a license, as specified in subsection (5)(b)2 of this section, the personal care or family care home shall return the check to the Kentucky State Treasurer.

(7) Failure to comply with subsections (5)(a) or (6) of this section may result in prosecution in accordance with KRS Chapter 514.

Section 5. Eligibility for Caretaker Services. (1) Service by a caretaker shall be provided to enable an adult to:

(a) Remain safely and adequately:

1. At home;

2. In another family setting; or

3. In a room and board situation; and

(b) Prevent institutionalization.

(2) Service by a caretaker shall be provided at regular intervals by:

(a) A live-in attendant; or

(b) One (1) or more persons hired to come to the home.

(3) Eligibility for caretaker supplementation shall be verified annually by the cabinet with the caretaker to establish how:

(a) Often the service is provided;

(b) The service prevents institutionalization; and

(c) Payment is made for the service.

(4) A supplemental payment shall not be made to or on behalf of an otherwise eligible individual if the:

(a) Client is taken daily or periodically to the home of the caretaker; or

(b) Caretaker service is provided by the following persons living with the applicant:

1. The spouse;

2. Parent of an adult or minor child who has a disability; or

3. Adult child of a parent who is aged, blind or has a disability.

Section 6. Resource Consideration. (1) Except as stated in subsection (2) of this section, countable resources shall be determined according to policies for the medically needy in accordance with:

(a) 907 KAR 1:640, Sections 1(1), (6), (7), (11), 3(4)(a);

(b) 907 KAR 1:645;

(c) 907 KAR 1:650, Section 1(9); and

(d) 907 KAR 1:660, Sections 1(1), (5), 2(1), (2), (3), and (4).

(2) An individual or couple shall not be eligible if countable resources exceed the limit of:

(a) $2000 for individual; or

(b) $3000 for couple.

Section 7. Income Considerations. (1) Except as noted in subsections (2) through (8) of this section, income and earned income deductions shall be considered according to the policy for the medically needy in accordance with:

(a) 907 KAR 1:640, Sections 1(1), (6), (7), (11), 3(4)(a);

(b) 907 KAR 1:645;

(c) 907 KAR 1:650, Section 1(9); and

(d) 907 KAR 1:660, Sections 1(1), (5), 2(1), (2), (3), and (4).

(2) The optional supplementation payment shall be determined by:

(a) Adding:

1. Total countable income of the applicant or recipient, or applicant or recipient and spouse; and

2. A payment made to a third party on behalf of an applicant or recipient; and

(b) Subtracting the total of paragraph (a)1 and 2 of this subsection from the standard of need in Section 8 of this administrative regulation.

(3) Income of an ineligible spouse shall be:

(a) Adjusted by deducting sixty-five (65) dollars and one-half (1/2) of the remainder from the monthly earnings; and

(b) Conserved in the amount of one-half (1/2) of the SSI standard for an individual for:

1. **The applicant or recipient[**~~Himself~~**]**; and

2. Each minor dependent child.

(4) Income of an eligible individual shall not be conserved for the needs of the ineligible spouse or minor dependent child.

(5) Income of a child shall be considered if conserving for the needs of the minor dependent child so the amount conserved does not exceed the allowable amount.

(6) The earnings of the eligible individual and ineligible spouse shall be combined prior to the application of the earnings disregard of sixty-five (65) dollars and one-half (1/2) of the remainder.

(7) If treating a husband and wife who reside in the same personal care or family care home as living apart prevents them from receiving state supplementation, the husband and wife may be considered to be living with each other.

(8) The SSI twenty (20) dollars general exclusion shall not be an allowable deduction from income.

(9)(a) For a resident in the Elder Shelter Network Program, income and resources of the spouse shall be disregarded for the month of separation.

(b) A third-party payment on behalf of an applicant or recipient made by the Elder Shelter Network Program shall be disregarded for ninety (90) days from the date of admission.

Section 8. Standard of Need. (1) To the extent funds are available, the standard of need is as follows:

(a) For a resident of a personal care home on or after January 1, 2012, $1,218[~~2009, $1,194~~];

(b) For a resident of a family care home on or after January 1, 2012, $870[~~2009, $846~~]; or

(c) For individuals who receive caretaker services:

1. A single individual, or an eligible individual with an ineligible spouse who is not aged, blind, or has a disability on or after January 1, 2012, $760[~~2009, $736~~];

2. An eligible couple, both aged, blind, or have a disability and one (1) requiring care on or after January 1, 2012,$1,109[~~2009, $1,072~~]; or

3. An eligible couple, both aged, blind or have a disability and both requiring care on or after January 1, 2012, $1,163[~~2009, $1,126~~].

(2)(a) In a couple case, if both are eligible, the couple's income shall be combined prior to comparison with the standard of need.

(b) One-half (1/2) of the deficit shall be payable to each.

(3) A personal care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a sixty (60) dollars personal needs allowance that shall be retained by the client.

(4) A family care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a forty (40) dollars personal needs allowance that shall be retained by the client.

Section 9. Temporary Stay in a Medical Facility. (1) An SSI recipient who receives optional or mandatory state supplementation shall have continuation of state supplementation benefits without interruption for the first three (3) full months of medical care in

a health care facility if the:

(a) SSI recipient meets eligibility for medical confinement established by 20 C.F.R. 416.212;

(b) Social Security Administration notifies the department that the admission shall be temporary; and

(c) Purpose shall be to maintain the recipient's home or other living arrangement during a temporary admission to a health care facility.

(2) A non-SSI recipient who receives mandatory or optional state supplementation shall have continuation of state supplementation benefits without interruption for the first three (3) full months of medical care in a health care facility if:

(a) The non-SSI recipient meets the requirements of subsection (1)(c) of this section;

(b) A physician certifies, in writing, that the non-SSI recipient is not likely to be confined for longer than ninety (90) full consecutive days; and

(c) A guardian or other payee, personal care home, or family care home, receiving a state supplementation check for the state supplementation recipient, provides a local county department office with:

1. Notification of the temporary admission; and

2. The physician statement specified in paragraph (b) of this subsection.

(3) A temporary admission shall be limited to the following health care facilities:

(a) Hospital;

(b) Psychiatric hospital; or

(c) Nursing facility.

(4) If a state supplementation recipient is discharged in the month following the last month of continued benefits, the temporary absence shall continue through the date of discharge.

Section 10. Citizenship requirements. An applicant or recipient shall be a:

(1) Citizen of the United States; or

(2) Qualified alien.

Section 11. Requirement for Residency. An applicant or recipient shall reside in Kentucky.

Section 12. [~~Persons with~~] Mental Illness or Mental Retardation (MI/MR) Supplement Program. (1) A personal care home:

(a) May qualify, to the extent funds are available, for a quarterly supplement payment of fifty (50) cents per diem for a state supplementation recipient in the personal care home's care as of the first calendar day of a qualifying month;

(b) Shall not be eligible for a payment for a Type A Citation that is not corrected; and

(c) Shall meet the following certification criteria for eligibility to participate in the MI/MR[~~Mental Illness or Mental Retardation~~] Supplement Program:

1. Be licensed in accordance with KRS 216B.010 to 216B.131;

2. Care for a population that is thirty-five (35) percent mental illness or mental retardation clients in all of its occupied licensed personal care home beds and who have a:

a. Primary or secondary diagnosis of mental retardation including mild or moderate, or other ranges of retardation whose needs can be met in a personal care home;

b. Primary or secondary diagnosis of mental illness excluding organic brain syndrome, senility, chronic brain syndrome, Alzheimer's, and similar diagnoses; or

c. Medical history that includes a previous hospitalization in a psychiatric facility, regardless of present diagnosis;

3. Have a licensed nurse or an individual who has received and successfully completed certified medication technician training on duty for at least four (4) hours during the first or second shift each day;

4. Not decrease staffing hours of the licensed nurse or individual who has successfully completed certified medication technician training in effect prior to July 1990, as a result of this minimum requirement;

5. Be verified by the Office of Inspector General in accordance with Section 14(2) through (4) of this administrative regulation; and

6. File an STS-1, Mental Illness or Mental Retardation (MI/MR) Supplement Program Application for Benefits, with the department by the tenth working day of the first month of the calendar quarter to be eligible for payment in that quarter.

a. Quarters shall begin in January, April, July and October.

b. Unless mental illness or mental retardation supplement eligibility is discontinued, a new application for the purpose of program certification shall not be required.

(2) A personal care home shall provide the department with its tax identification number and address as part of the application process.

(3) The department shall provide[~~mail~~] an STS-2, Mental Illness or Mental Retardation (MI/MR) Supplement Program Notice of Decision to Personal Care Home to a personal care home following:

(a) Receipt of verification from the Office of Inspector General as specified in Section 14(6) of this administrative regulation; and

(b) Approval or denial of an application.

(4) A personal care home shall:

(a) Provide the department with an STS-3, Mental Illness or Mental Retardation (MI/MR) Supplement Program Monthly Report Form that:

1. Lists every resident of the personal care home who was a resident on the first day of the month;

2. Lists the resident's Social Security number; and

3. Annotates the form, in order to maintain confidentiality, as follows with a:

a. Star indicating a resident has a mental illness or mental retardation diagnosis;

b. Check mark indicating a resident receives state supplementation; and

c. Star and a check mark indicating the resident has a mental illness or mental retardation diagnosis and is a recipient of state supplementation; and

(b) Submit[~~Mail~~] the STS-3 to the department on or postmarked by the fifth working day of the month by:

1. Mail;

2. Fax; or

3. Electronically.

(5) The monthly report shall be used by the department for:

(a) Verification as specified in subsection (4)(a) of this section;

(b) Payment; and

(c) Audit purposes.

(6)(a) A personal care home shall notify the department within ten (10) working days if its mental illness or mental retardation percentage goes below thirty-five (35) percent for all personal care residents.

(b) A personal care home may be randomly audited by the department to verify percentages and payment accuracy.

Section 13. Mental Illness or Mental Retardation Basic Training. (1)(a) To the extent cabinet funds are available to support the training, a personal care home's licensed nurse, or individual who has successfully completed certified medication technician training shall attend the mental illness or mental retardation basic training workshop provided through the Department for Behavioral Health, Developmental and Intellectual Disabilities[~~Department for Mental Health, Developmental Disabilities, and Addiction Services~~].

(b) Other staff may attend the basic training workshop in order to assure the personal care home always has at least one (1) certified staff employed for certification purposes.

(2) The mental illness or mental retardation basic training shall be provided through a one (1) day workshop. The following topics shall be covered:

(a) Importance of proper medication administration;

(b) Side effects and adverse medication reactions with special attention to psychotropics;

(c) Signs and symptoms of an acute onset of a psychiatric episode;

(d) Characteristics of each major diagnosis, for example, paranoia, schizophrenia, bipolar disorder, or mental retardation;

(e) Guidance in the area of supervision versus patient rights for the population with a diagnosis of mental illness or mental retardation; and

(f) Instruction in providing a necessary activity to meet the needs of a resident who has a diagnosis of mental illness or mental retardation.

(3) Initial basic training shall:

(a) Include the licensed nurse or the individual who has successfully completed certified medication technician training and may include the owner or operator; and

(b) Be in the quarter during which the STS-1 is filed with the department.

(4) To assure that a staff member who has received basic training is always employed at the personal care home, a maximum of five (5) may be trained during a year.

(a) If staff turnover results in the loss of the licensed nurse or individual who has successfully completed certified medication technician training and four (4) other staff have been trained, the personal care home shall request in writing to the department an exemption of the five (5) staff maximum, in order to train another staff member.

(b) A personal care home shall have on staff a licensed nurse or individual who:

1. Has successfully completed certified medication technician training; and

2.a. Has received mental illness or mental retardation basic training; or

b. Is enrolled in the next scheduled mental illness or mental retardation basic training workshop at the closest location.

(5) The Department for Behavioral Health, Developmental and Intellectual Disabilities[~~The Department for Mental Health, Developmental Disabilities, and Addiction Services~~] may provide advanced level training for a personal care home.

(a) Advanced level training shall be provided through a one (1) day workshop.

(b) Each advanced level workshop shall consist of two (2) **sessions per day, and each session shall be three (3) hours in duration[**~~three (3) hour sessions per day~~**]**.

(c) Each three (3) hour session shall cover a topic appropriate for staff who work with a resident who has a diagnosis of mental illness or mental retardation.

(d) Attendance of an advanced level training workshop shall be optional.

(6) The Department for Behavioral Health, Developmental and Intellectual Disabilities[~~The Department for Mental Health, Developmental Disabilities, and Addiction Services~~] shall provide within five (5) working days a:

(a) Certificate to direct care staff who complete the training workshop; and

(b) Listing to the department of staff who completed the training workshop.

(7) Unless staff turnover occurs as specified in subsection (4)(a) of this section, the department shall pay twenty-five (25) dollars, to the extent funds are available, to a personal care home:

(a) That has applied for the MI/MR[~~Persons with Mental Illness or Mental Retardation~~] Supplement Program; and

(b) For each staff member receiving basic or advanced level training up to the maximum of five (5) staff per year.

(8) Attendance of the basic training workshop shall be optional for a specialized personal care home.

Section 14. MI/MR[~~Persons with Mental Illness or Mental Retardation~~] Supplement Program Certification. (1) The Office of the Inspector General shall visit a personal care home to certify eligibility to participate in the MI/MR[~~Persons with Mental Illness or Mental Retardation~~] Supplement Program.

(a) The personal care home's initial MI/MR[~~Persons with Mental Illness or Mental Retardation~~] Supplement Program Certification Survey:

1. May be separate from an inspection conducted in accordance with KRS 216.530; and

2. Shall be in effect until the next licensure survey.

(b) After a personal care home's initial MI/MR[~~Persons with Mental Illness or Mental Retardation~~] Supplement Program Certification Survey is completed, the personal care home may complete any subsequent certification survey during the licensure survey as specified in paragraph (a)2 of this subsection.

(c) The department shall notify the Office of Inspector General that the personal care home is ready for an inspection for eligibility.

(2) During the eligibility inspection, the Office of Inspector General shall:

(a) Observe and interview residents and staff; and

(b) Review records to assure the following criteria are met:

1. Except for a specialized personal care home, certification is on file at the personal care home to verify staff's attendance of basic training, as specified in Section 13(1) through (4) of this administrative regulation;

2. The personal care home:

a. Has certified staff training all other direct care staff through in-service training or orientation regarding the information obtained at the mental illness or mental retardation basic training workshop; and

b. Maintains documentation of attendance at the in-service training for all direct care staff;

3. Medication administration meets licensure requirements and a licensed nurse or individual who has successfully completed certified medication technician training:

a. Demonstrates a knowledge of psychotropic drug side affects; and

b. Is on duty as specified in Section 12(1)(c)3 of this administrative regulation; and

4. An activity is being regularly provided that meets the needs of a resident.

a. If a resident does not attend a group activity, an activity shall be designed to meet the needs of the individual resident, for example, reading or other activity that may be provided on an individual basis.

b. An individualized care plan shall not be required for the criteria in clause a. of this subparagraph.

(3) The Office of Inspector General shall review the personal care home copy of the training certification prior to performing a record review during the MI/MR[~~Persons with Mental Illness or Mental Retardation~~] Supplement Program Certification Survey process.

(4) If thirty-five (35) percent of the population is mental illness or mental retardation clients, as specified in Section 12(1)(c)2 of this administrative regulation, on the day of the visit, a personal care home shall be deemed to have an ongoing qualifying percentage effective with month of request for certification as specified in subsection (1)(c) of this section.

(5) If the mental illness or mental retardation population goes below thirty-five (35) percent of all occupied personal care beds in the facility, the personal care home shall notify the department as specified in Section 12(6)(a) of this administrative regulation.

(6) The Office of Inspector General shall provide the department with a completed STS-4, Mental Illness or Mental Retardation (MI/MR) Supplement Certification Survey within fifteen (15) working days of an:

(a) Initial survey; or

(b) Inspection in accordance with KRS 216.530.

(7) The Office of Inspector General shall provide a copy of a Type A Citation issued to a personal care home to the department by the fifth working day of each month for the prior month.

(8) The personal care home shall receive a reduced payment for the number of days the Type A Citation occurred on the first administratively feasible quarter following notification by the Office of Inspector General, in accordance with 921 KAR 2:050.

(9) If a criterion for certification is not met, the department shall issue[~~mail~~] an STS-2 to a personal care home following receipt of the survey by the Office of Inspector General as specified in subsection (6) of this section.

(10) The personal care home shall provide the department with the information requested[~~information~~] on the STS-2:

(a) Relevant to unmet certification criteria specified on the STS-4; and

(b) Within ten (10) working days after the STS-2 is issued[~~mailed~~].

(11) If a personal care home fails to provide the department with the requested information specified in subsection (10) of this section, assistance shall be discontinued or decreased, pursuant to 921 KAR 2:046.

(12) If a personal care home is discontinued from the MI/MR[~~Mental Illness or Mental Retardation~~] Supplement Program, the personal care home may reapply for certification, by filing an STS-1 in accordance with Section 12(1)(c)6 of this administrative regulation, for the next following quarter.

Section 15. Hearings and Appeals. An applicant or recipient of benefits under a program described in this administrative regulation who is dissatisfied with an action or inaction on the part of the cabinet shall have the right to a hearing under 921 KAR 2:055.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "STS-1, Mental Illness or Mental Retardation (MI/MR) Supplement Program Application for Benefits", edition 1/09;

(b) "STS-2, Mental Illness or Mental retardation (MI/MR) Supplement Program Notice of Decision to Personal Care Home", edition 1/09;

(c) "STS-3, Mental Illness or Mental Retardation (MI/MR) Supplement Program Monthly Report Form", edition 1/09; and

(d) "STS-4, Mental Illness or Mental Retardation (MI/MR) Supplement Certification Survey", edition 1/12[~~1/09~~].

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

PATRICIA R. WILSON, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: December 14, 2011

FILED WITH LRC: December 29, 2011 at 3 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.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR RECEIPT OF WRITTEN COMMENTS

TOURISM, ARTS AND HERITAGE CABINET
Kentucky Department of Fish and Wildlife Resources
(Amended After Comments)

301 KAR 1:410. Taking of fish by nontraditional fishing methods.

RELATES TO: KRS 150.010,[~~150.025(1), 150.120,~~] 150.170, 150.175, 150.235,[~~150.360, 150.370, 150.440,~~] 150.445, 150.620, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.440, 150.470**, 235.280**[~~150.470,~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to make **those[**~~such~~**]** requirements apply to a limited area.[~~wildlife and to regulate bag or creel limits.~~] KRS 150.440 authorizes the department to promulgate administrative regulations for establishing open seasons and creel limits for rough fish by gigging, grabbing, snaring, and snagging. KRS 150.470 authorizes the department to promulgate **administrative** regulations for bag or creel limits for fish. This administrative regulation establishes the procedures for taking sport and rough fish by nontraditional fishing methods including underwater spearing, scuba diving, sport fishing trotlines, jugging, setlines, gigging,[~~jugging and setlines, gigging and~~] snagging, grabbing, bow fishing, and the taking of rough fish from backwaters.

Section 1. Definitions. (1) "Archery equipment" means a long bow, recurve bow, or compound bow incapable of holding an arrow at full or partial draw without aid from the archer.

(2) "Asian carp" means bighead carp, silver carp, black carp, and grass carp.

(3) "Bowfishing" means shooting rough fish with an arrow with a barbed or retractable style point that has a line attached to it for retrieval with archery equipment or a crossbow.

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

(5) "Cull" means to release a previously caught fish that an angler has kept as a part of a daily creel limit and replace it with another fish of the same species.

(6) "Sport fisherman" means a person holding a valid resident or nonresident fishing license and includes those persons who are license exempt pursuant to KRS 150.170.

(7) "Temporary aquatic area" means an area temporarily inundated from, but still connected to a stream, river, or reservoir and that persists only for the duration of the elevated water levels.

(8) "Temporary pool" means an area temporarily inundated from, but not connected to a stream, river, or reservoir.

Section 2. Skin Diving, Scuba Diving, and Underwater Spear Fishing. (1) Skin diving or scuba diving is prohibited in all lakes owned by the department, except as established in subsections (2), (3), and (4)[~~(2) and (3)~~] of this section.

(2) Skin diving and scuba diving shall be allowed in salvage operations if the diver receives prior written permission from:

(a) The department's Division of Law Enforcement; or

(b) The local conservation officer who is assigned to the particular department-owned lake.[~~permitted in salvage operations upon receipt of written permission by the diver from the Division of Law Enforcement or the local Conservation Officer assigned to the specific body of water in which the diving is to take place.~~]

(3) Skin diving or scuba diving shall be permitted anytime without prior authorization in cases of emergency involving the possibility of saving human life or in the recovery of a drowning victim.[~~victim of drowning.~~]

(4) Skin diving and scuba diving shall be allowed in Greenbo Lake:

(a) In a designated cove marked with signage and buoys;

(b) From April 1 through October 31; and

(c) From 10:00 a.m. to 6:00 p.m. daily.

(5) A person who is skin diving or scuba diving in the designated cove shall display an international diving flag pursuant to the requirements established in 301 KAR 6:030.

(6)[~~(5)~~**]** Recreational boating and angling shall be prohibited in the designated cove marked with signage and buoys during the times open to skin diving and scuba diving as established in subsection (4) of this **section, but only when an international diving flag is present in the cove.[**~~section.~~**]**

(7)[~~(6)~~**]** Underwater spearing of fish with a hand held spear or mechanically-propelled spear shall be legal throughout the year in lakes 1,000 acres in size or larger as measured at the normal summer pool level, with the following provisions:[~~normal or summer pool level.~~]

(a) A participant who is spearing fish shall be completely submerged in the water where[~~in the underwater spearing of fish shall be completely submerged in the water in which~~] spearing takes **place;[**~~.~~**]**

(b) A person shall possess a valid Kentucky fishing license or be license exempt pursuant to KRS 150.170;

(c) A person shall only spear rough fish; and

(d)[~~Only rough fish shall be taken, and an appropriate fishing license shall be required.(c)~~] The daily limit shall be fifteen (15) rough fish, no[~~not~~] more than five (5) of which shall be catfish.

Section 3. Sport Fishing Trotlines, Jugging, and Setlines. (1) Each sport fishing trotline, jug line, or setline shall be permanently labeled or tagged with the name and address of the person using it.

(2) Each trotline, jug line, and setline shall be checked by the owner at least once every twenty-four (24) hours, at which time the owner shall:

(a) Bait all hooks; and

(b) Remove all caught fish.

(3) A trotline, setline, or jug line shall be confiscated if:

(a) It is not properly labeled or tagged; or

(b) It is not checked or baited at least once every twenty-four (24) hours.

(4) A sport fisherman shall not use more than:

(a) Two (2) sport fishing trotlines;

(b) Twenty-five (25) setlines; or

(c) Fifty (50) jug lines.

(5) Multiple sport fishermen in one (1) boat shall not use more than fifty (50) jug lines per boat.

(6) A person using a sport fishing trotline shall:

(a) Set the trotline at least three (3) feet below the water's surface;

(b) Not have more than fifty (50) single or multi-barbed hooks; and

(c) Have all hooks at least eighteen (18) inches apart on the trotline.

(7) A person shall not use a jug line or setline with more than one (1) single or multi-barbed hook.

(8) Sport fishing trotlines, jugs, or setlines shall not be used in the following waters:

(a) In the Tennessee River within 700 yards of Kentucky Dam;

(b) In the Cumberland River below Barkley Dam to the Highway 62 bridge;

(c) In any lake less than 500 surface acres owned or managed by the department, except:

1. Ballard Wildlife Management Area lakes,[~~Lakes,~~] Ballard County;

2. Peal Wildlife Management Area lakes,[~~Lakes,~~] Ballard County; and

3. Swan Lake[~~Lakes~~] Wildlife Management Area lakes,[~~Lakes,~~] Ballard County; or

(d) In the following areas of the Ohio River;

1. Smithland Dam downstream to a line perpendicular to the

end of the outer lock wall;

2. J. T. Meyers Dam downstream to a line perpendicular to the end of the outer lock wall and that portion of the split channel around the southern part of Wabash Island from the fixed weir dam to the first dike;

3. Newburgh Dam downstream to a line perpendicular to the end of the outer lock wall;

4. Cannelton Dam downstream to a line perpendicular to the end of the outer lock wall;

5. McAlpine Dam downstream to the K&I railroad bridge;

6. Markland Dam downstream to a line perpendicular to the end of the outer lock wall;

7. Meldahl Dam downstream to a line perpendicular to the end of the outer lock wall; or

8. Greenup Dam downstream to a line perpendicular to the end of the outer lock wall.

(9) Taylorsville Lake blue and channel catfish limits:

(a) Aggregate daily creel limit of fifteen (15); and

(b) Only one (1) fish of either species in the aggregate daily creel limit shall be longer than twenty-five (25) inches.

Section 4. Temporary Aquatic Areas and Temporary Pools. (1) The department, with consent of the landowner, may delineate temporary aquatic areas and temporary pools where rough fish may be taken by any method except:

(a) Poison;

(b) Electrical devices;

(c) Firearms; and

(d) Explosives.

(2) The department shall be authorized to establish the exact dates and times when rough fish may be taken in temporary aquatic areas and temporary pools.

(3) A person shall be required to possess a valid Kentucky fishing license or be license exempt pursuant to KRS 150.170.

(4) A person with a valid commercial fishing license may use nets and seines as long as the nets and seines are appropriately tagged, pursuant to 301 KAR 1:146.

(5) A person shall first obtain the permission of the landowner before taking rough fish from a temporary pool.

Section 5. Gigging and Snagging. (1) Gigging and snagging season shall be February 1 through May 10, except as provided in subsections (7) and (9) of this section;

(2) A person shall not:

(a) Gig or snag a sport fish, pursuant to 301 KAR 1:060, except as provided in subsections **(**7**)** and **(**9**)** of this section;

(b) Gig or snag from a platform;

(c) Gig from a boat in a lake with a surface area of less than 500 acres;

(d) Gig at night from a boat;[~~from a boat at night;~~]

(e) Snag from a boat; or

(f) Have a snagging rod in excess of seven (7) and one-half (1/2) feet in length, including the handle;

(3) A snagging rod shall be equipped with:

(a) Line;

(b) Guides;

(c) A reel; and

(d) One (1) single hook or treble hook attached to the line, except that five (5) hooks, either single or treble, may be used when snagging in:

1. The Green River and its tributaries; or

2. The Rolling Fork River and its tributaries.

(4) A person who accidentally gigs or snags a sport fish shall immediately return the fish to the water, except as provided in subsections (7) and (9) of this section.

(5) A person shall not gig or snag in the following areas or bodies of water:

(a) The Cumberland River below Wolf Creek Dam downstream to the Tennessee line, including Hatchery Creek;

(b) Any tributary of the Cumberland River below Wolf Creek Dam to the Tennessee line from the junction of the tributary with the Cumberland River to one-half (1/2) mile upstream;

(c) The Middle Fork of the Kentucky River, from Buckhorn Lake Dam downstream to the Breathitt County line in Perry County;

(d) The Rough River, below Rough River Lake Dam downstream to the State Highway 54 bridge in Breckinridge and Grayson Counties;

(e) Cave Run Lake;

(f) Within 200 yards of any dam on a river or stream, except as specified in subsection (7) of this section.

(6) A person shall not gig in the Tennessee River below Kentucky Lake Dam.

(7) A person may snag sport fish or rough fish in the Tennessee River below the Kentucky Lake Dam to the new U.S. 62 bridge:[~~bridge;~~]

(a) For twenty-four (24) hours a day from January 1 through May 31; and

(b) From sunset to sunrise from June 1 through December 31.

(8) A person shall not snag in that section of the Tennessee River from the new U.S. 62 bridge to the Interstate 24[~~Interstate 24~~] bridge.

(9) A person may snag sport fish or rough fish year round in that section of the Tennessee River from the Interstate 24[~~Interstate 24~~] bridge to the Ohio River.

(10) A person shall not snag on the Tennessee River:

(a) Under the U.S. 62 bridge;

(b) Under the P & L Railroad bridge; and

(c) From the fishing piers located below the U.S. 62 bridge.

(11) There shall not be a daily creel limit for rough fish except:

(a) The daily creel limit for rough fish in the Cumberland River below Barkley Lake Dam shall be eight (8) except there shall not be a creel limit on Asian Carp;

(b) The daily aggregate creel limit for snagging of rough and sport fish in the Tennessee River below Kentucky Lake Dam shall be eight (8) except there shall not be a creel limit on Asian Carp; and

(c) The statewide daily creel limit for paddlefish shall be two (2), in all areas outside those described in paragraphs (a) and (b) of this subsection, where up to eight (8) paddlefish may be taken.

(12) A person shall immediately retain, and not release or cull, any gigged or snagged paddlefish.

(13) All snagged fish in the Tennessee River below Kentucky Lake Dam shall be immediately retained, and not released or culled, except for Asian carp, shad, or herring.

(14) All gigged or snagged rough fish in the Cumberland River below Barkley Lake Dam shall be immediately retained, and not released or culled, except for Asian carp, shad, or herring.

(15) A person shall immediately cease snagging if:

(a) A daily limit of paddlefish is reached; or

(b) A daily limit of sport fish has been caught in the Tennessee River below Kentucky Lake Dam, even if the creel limit for that sport fish is less than eight (8).

Section 6. Grabbing (Tickling and Noodling). (1) The grabbing season for rough fish, also known as tickling and noodling, shall be June 1 to August 31 during daylight hours.

(2) Tickling and noodling shall be permitted in all waters.

(3) The daily creel limit for tickling and noodling shall be fifteen (15) fish, no more than five (5) of which shall be catfish.[~~not more than five (5) of which shall be catfish in aggregate.~~]

Section 7. Bow Fishing. (1) A person using archery equipment or a crossbow shall not take:

(a) Sport fish;

(b) More than five (5) catfish[~~in aggregate~~] daily; or

(c) More than two (2) paddlefish daily.

(2) Any paddlefish or catfish shot with archery equipment or a crossbow shall be immediately retained, and not released or culled, and shall count toward a person's daily limit.

(3) Bow fishing shall be open statewide, except:

(a) In the Cumberland River below Wolf Creek Dam downstream to the Tennessee line including Hatchery Creek;

(b) Any tributary of the Cumberland River below Wolf Creek Dam to the Tennessee line, from the junction of the tributary with the Cumberland River to one-half (1/2) mile upstream; and

(c) From a boat in restricted areas below navigation, power generating, or flood control dams.

BENJY KINMAN, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
MARCHETA SPARROW, Secretary
APPROVED BY AGENCY: May 11, 2012
FILED WITH LRC: May 14, 2012 at 2 p.m.
CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext. 4507, fax (502) 564-9136, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the procedures for taking sport and rough fish by nontraditional fish methods.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to effectively manage the fish populations of Kentucky.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, establish bag limits, creel limits, and methods for the taking of fish and wildlife, and to make such requirements apply to a limited area. KRS 150.440 authorizes the Department to set seasons and creel limits for rough fish. KRS 150.470 authorizes the department to set size, creel, and possession limits.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the statutes by authorizing the methods used to take fish, the areas open for such take, and the seasons and limits to be used when taking fish by nontraditional methods.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment will establish a designated scuba and skin diving area at Greenbo Lake, and regulate the times and conditions when such activity is allowed.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to cooperate with the Department of Parks in allowing regulated skin and scuba diving in Greenbo Lake to provide a reasonable amount of recreational activity that will not significantly conflict with recreational boating and fishing.
(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.
(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals who want to scuba or skin dive at Greenbo Lake will be affected. It is unknown how many people this will impact. Recreational boaters and anglers 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: Scuba and skin divers will be able to use a designated area of Greenbo Lake to pursue their activity at certain periods of the year and times of the day. Recreational boaters and anglers will need to avoid using this designated area at certain times and periods.
(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 scuba divers, skin divers, recreational boaters, or anglers as a result of this amendment.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Scuba and skin divers will benefit by having a designated area to pursue their activity at certain times and periods.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: This administrative regulation change will result in no initial change in cost.
(b) On a continuing basis: There will be no additional cost on a continuing basis.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: It will not be necessary to increase any other fees or to increase funding to implement this administrative regulation.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees will be established.
(9) TIERING: Is tiering applied? Tiering was not applied because all people will need to comply equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes.
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Fish and Wildlife Resources Divisions of Fisheries and Law Enforcement will be impacted by this administrative regulation.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 150.025 authorizes the Department to promulgate administrative regulations to regulate creel limits and possession limits of fish, to fix open seasons, to regulate the type of any device and methods used, and areas that are open to take fish. KRS 150.440 authorizes the department to establish open seasons and creel limits for rough fish by gigging, grabbing, snaring, and snagging. KRS 150.470 authorizes the department to set size, season, and possession limits.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation during the first year.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this administrative regulation during subsequent years.
(c) How much will it cost to administer this program for the first year? There will be no additional costs incurred for the first year.
(d) How much will it cost to administer this program for subsequent years? There will be no additional costs incurred in subsequent years.
Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-):
Expenditures (+/-):
Other Explanation:

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

(g) 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) 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 a 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 4:050, the hearing officer:

(a) Shall:

1. Consider the matter; and

2. Give deference to the prior decision by the authority in the same manner that a court would give deference in reviewing the decision of an administrative agency; and

(b) May reverse the prior decision if the debtor presents evidence that:

1. Circumstances have changed or new information is available; or

2. The prior decision:

a. Substantially disregarded or ignored the defense; or

b. Was arbitrary, capricious, not supported by the facts, or made through fraud.

(4) If the debtor asserts as a defense a claim of entitlement to discharge of the particular debt pursuant to 34 C.F.R. 682.402, except for reason of bankruptcy, but has not previously sought discharge by the authority for that specific reason, the hearing officer shall stay the hearing for a period sufficient to permit the debtor to submit documentation to the authority for a determination of eligibility for entitlement to the discharge. At the expiration of the period of stay, the hearing officer shall review the circumstances and:

(a) Uphold the right of the authority to issue an order of wage withholding if the debtor has failed to submit documentation to the authority for review of entitlement to discharge;

(b) Dismiss the request for hearing if the debtor has submitted documentation and the authority has approved discharge of the debt; or

(c) Proceed with the hearing if the debtor submitted documentation and the authority denied discharge, except that the hearing officer shall consider the defense of entitlement to discharge in accordance with subsection (3) of this section.

(5) If the debtor asserts as a defense a claim that the debt was dischargeable in a previous bankruptcy pursuant to 11 U.S.C. 523(a)(8), but the debtor did not previously seek discharge by the bankruptcy court, the hearing officer shall stay the hearing for a period sufficient to permit the debtor to reopen the bankruptcy case. At the expiration of the period of stay, the hearing officer shall review the circumstances and:

(a) Uphold the right of the authority to issue an order of wage withholding if the debtor has failed to obtain the bankruptcy court's permission to reopen the bankruptcy case to seek discharge of the particular debt; or

(b) Dismiss the request for hearing if the bankruptcy court has reopened the bankruptcy case to consider discharge of the particular debt.

(6)(a) If the debtor asserts as a defense a claim that withholding of his disposable pay would constitute an extreme financial hardship, the debtor shall submit documentation of all available resources and actual expenses and shall have the burden of demonstrating the necessity of actual expenses.

(b) The hearing officer shall compare the debtor's available resources and the necessary expenses and current debt obligations of the debtor and debtor's dependents. The hearing officer shall determine that extreme financial hardship exists if the debtor currently is not able to provide at least minimal subsistence for the debtor and debtor's dependents that could be claimed on a federal income tax return. The hearing officer shall consider as available resources of the debtor income of the debtor, the debtor's spouse, and debtor's dependents from all sources, including nontaxable income and government benefits, expenses paid on behalf of the debtor by another person, and the cash value of any current liquid assets, such as bank accounts and investments. The hearing officer shall consider the claim of extreme financial hardship in accordance with the presumptions established in this paragraph.

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	$11,170
2	$15,130
3	$19,090
4	$23,050
5	$27,010
6	$30,970
7	$34,930
8	$38,890
Each additional person	Add $3,960

[~~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~~]

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 guideline
1	$13,970
2	$18,920
3	$23,870
4	$28,820
5	$33,770
6	$38,720
7	$43,670
8	$48,620
Each additional person	Add $4,950

[~~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~~]

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 guideline
1	$12,860
2	$17,410
3	$21,960
4	$26,510
5	$31,060
6	$35,610
7	$40,160
8	$44,710
Each additional person	Add $4,550

[~~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~~]

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 dwellings	1,519	1,162	1,665	2,662	3,358	4,539	4,879	7,389	13,313
Rented dwellings	5,046	3,704	3,854	3,915	3,771	4,006	4,246	3,979	2,795
Other lodging	190	66	147	198	379	301	392	690	1,613
Utilities, fuels, and public services	1,715	1,953	2,100	2,783	3,183	3,553	3,760	4,149	5,473
Household operations	286	395	335	403	755	694	684	804	2,068
Housekeeping and miscellaneous supplies	294	269	285	363	417	387	603	566	978

Household furnishings and equipment	566	400	376	726	750	972	1,127	1,324`	2,631
Vehicle purchases (net outlay)	520	681	165	986	1,370	2,011	3,045	1,977	4,259
Gasoline and motor oil	647	603	570	838	1,143	1,459	1,844	1,961	2,766
Vehicle maintenance and repairs	118	305	247	420	374	555	711	809	1,282
Vehicle insurance	875	596	359	693	851	1,106	632	1,666	1,638
Vehicle rental, lease, license and other charges	138	114	103	207	249	325	342	547	1,199
Public transportation	205	181	238	315	337	437	469	640	1,209

[~~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~~]

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	9,086	8,209	8,233
Rented dwellings	5,340	3,095	3,639
Other lodging	896	964	994
Utilities, fuels, and public services	4,323	4,316	4,177
Household operations	1,454	1,013	1,540
Housekeeping and miscellaneous supplies	623	642	631
Household furnishings and equipment	1,518	1,451	1,745
Vehicle purchases (net outlay)	2,098	1,788	3,324
Gasoline and motor oil	1,741	1,802	2,056
Other vehicle expenses (repairs, insurance, lease, license, and other charges)	3,029	2,746	3,061
Public transportation	1,076	624	666

	[~~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~~]

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	1,301	1,195	1,733	2,253	3,080	4,311	5,139	6,839	10,987
Rented dwellings	2,815	2,851	2,906	2,810	2,629	2,348	1,978	1,698	1,022
Other lodging	241	192	129	199	268	282	331	540	1,452
Utilities, fuels and public services	1,450	1,704	2,104	2,468	2,993	3,255	3,464	3,762	4,558
Household operations	257	220	286	364	381	507	612	788	1,592
Housekeeping and miscellaneous supplies	301	293	365	396	517	453	577	624	1,046
Household furnishings and equipment	538	449	488	531	808	896	1,134	1,465	2,548
Vehicle purchases (net outlay)	474	753	425	702	1,249	2,248	2,120	3,172	4,898
Gasoline and motor oil	859	845	889	1,075	1,491	1,769	2,044	2,356	2,980
Vehicle maintenance and repairs	214	236	333	482	551	587	768	782	1,162
Vehicle insurance	291	250	374	499	655	739	944	845	1,484
Vehicle lease, license, and other charges	138	141	118	172	273	302	371	435	782
Public transportation	89	173	123	209	189	213	206	349	903

[~~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~~]

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	9,404	6,664	7,846	5,323
Rented dwelling	2,760	2,230	2,343	2,482
Other lodging	1,054	771	856	532
Utilities, fuels, and public services	3,969	3,911	3,336	3,680
Household operations	1,075	958	1,187	647

Housekeeping and miscellaneous supplies	676	618	754	626
Household furnishings and equipment	1,598	1,336	1,968	1,430
Vehicle purchases (net outlay)	3,025	3,414	2,173	2,032
Gasoline and motor oil	2,157	2,212	2,134	1,706
Other vehicle expenses (repairs, insurance, lease, license, and other charges)	2,637	3,440	2,522	2,774
Public transportation	843	394	652	418

	[~~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~~]

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	1,785	1,180	1,710	2,072	2,380	3,547	4,481	5,383	10,993
Rented dwelling	2,632	2,516	2,586	2,668	2,870	2,655	2,967	2,406	1,541
Other lodging	88	162	97	95	184	222	254	448	1,364
Utilities, fuels, and other charges	2,256	2,308	2,590	3,058	3,258	3,448	3,627	4,102	5,034
Household operations	335	255	360	452	501	638	759	944	1,856
Housekeeping and miscellaneous supplies	298	352	367	373	440	505	507	621	1,028
Household furnishings and equipment	506	555	475	745	755	1,076	1,073	1,340	2,795
Vehicle purchases (net outlay)	788	505	770	1,175	1,476	2,170	2,124	2,592	5,144
Gasoline and motor oil	1,051	827	1,103	1,410	1,658	1,955	2,181	2,520	3,135
Vehicle maintenance and repairs	279	283	308	396	470	632	602	722	1,105
Vehicle insurance	361	449	512	761	724	1,171	1,053	1,167	1,517
Vehicle lease, license, and other charges	122	82	94	124	132	176	230	274	592
Public transportation	91	84	69	101	141	153	193	244	752

[~~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~~	~~699~~	~~457~~	~~459~~	~~759~~	~~750~~	~~945~~	~~1,137~~	~~1,593~~	~~2,950~~

~~and equipment~~									
~~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~~]

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	10,630	9,147	7,445	6,967	6,336	7,499
Rented dwelling	4,447	3,137	2,990	4,372	3,338	2,793
Other lodging	1,321	1,009	415	935	508	612
Utilities, fuels, and public services	4,103	4,276	4,078	3,737	4,346	4,539
Household operations	1,769	930	1,142	928	1,204	1,494
Housekeeping and miscellaneous supplies	791	613	743	452	704	618
Household furnishings and equipment	2,366	1,530	1,120	1,016	1,744	1,770
Vehicle purchases (net outlay)	3,363	1,937	2,330	1,585	2,257	3,351
Gasoline and motor oil	2,139	2,123	2,249	2,149	2,452	2,471
Other vehicle expenses (repairs, insurance, lease, license, and other charges)	3,411	2,036	2,148	2,419	2,905	3,058
Public transportation	1,155	471	438	417	403	531

	[~~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~~]

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	4,522	1,434	2,178	2,238	3,281	4,075	5,140	7.018	13,565
Rented dwelling	3,222	4,942	4,340	4,665	4,599	4,686	4,617	4,377	3,318
Other lodging	388	108	89	159	198	259	340	544	1,426
Utilities, fuels, and public services	2,046	1,555	1,852	2,286	2,541	2,881	3,195	3,554	4,447
Household operations	851	321	501	861	604	617	748	953	2,024
Housekeeping and miscellaneous supplies	343	259	380	375	481	470	526	624	909
Household furnishings and equipment	760	628	777	785	664	1,050	1,052	1,510	2,773

Vehicle purchases (net outlay)	1,277	266	823	605	1,402	2,012	1,697	2,399	4,419
Gasoline and motor oil	927	1,038	997	1,149	1,497	1,741	2,004	2,377	2,915
Vehicle maintenance and repairs	453	370	351	561	494	583	860	890	1,319
Vehicle insurance	76	69	625	658	587	1,087	906	1,338	1,279
Vehicle lease, license, and other charges	227	164	178	221	234	350	465	473	859
Public transportation	353	134	201	272	252	366	370	553	1,186

[~~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~~]

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	7,433	11,194	7,877	8,530	6,215
Rented dwelling	6,070	6,573	6,989	3,754	2,718
Other lodging	623	1,423	439	1,168	543
Utilities, fuels, and public services	3,049	3,207	3,114	3,611	3,742
Household operations	1,325	1,498	1,352	1,836	1,005
Housekeeping and miscellaneous supplies	597	611	547	637	759
Household furnishings and equipment	1,487	1,762	1,362	2,089	1,499
Vehicle purchases (net outlay)	2,260	2,457	1,819	4,463	2,561
Gasoline and motor oil	2,334	1,931	2,246	2,046	2,202
Other vehicle expenses (repairs, insurance, lease, license, and other charges)	3,339	3.058	2,461	2,443	2,828
Public transportation	608	1,062	438	1,102	417

	[~~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~~]

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	2,615	2,430	2,640	2,613	2,897	3,286	4,154	4,557	6,481
Apparel	546	484	712	576	718	762	1,092	1,087	2,202
Health insurance	513	574	1,103	1,418	1,320	1,353	1,213	1,306	1,601
Medical services	282	132	273	357	472	483	550	584	916
Prescription drugs	152	157	334	443	380	400	369	247	377
Medical supplies	49	33	47	75	74	91	67	82	136
Personal care products and services	192	217	234	272	304	343	438	564	691
Education	1,189	742	374	311	403	587	193	614	813
Life and other personal insurance	69	55	93	109	89	119	130	194	371

[~~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~~]

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	5,286	4,176	4,640	4,445	5.038	5,607	5,912	6,798	9,922
Apparel	1,046	1,633	1,041	1,104	1,354	1,485	1,454	1,700	2,934
Health insurance	1,062	856	895	1,023	1,682	1,890	1,947	2,206	2,511
Medical services	579	205	337	336	536	556	593	815	1,225
Prescription Drugs	288	188	393	360	491	481	565	547	642
Medical supplies	73	39	51	78	91	99	108	134	192
Personal care products and services	371	309	301	357	431	470	495	574	1,006
Education	1,233	589	518	323	318	466	558	679	2,392
Life and other personal insurance	164	101	99	135	144	220	236	305	646

[~~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 and services~~	~~476~~	~~267~~	~~274~~	~~339~~	~~374~~	~~475~~	~~517~~	~~583~~	~~988~~
~~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~~]

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	5,441	4,077	4,692	4,364	5,252	5,897	6,115	7.058	9,531
Apparel	1,205	2,632	1,014	1,146	1,656	1,859	1,470	1,896	2,632
Health insurance	646	547	433	523	991	1,555	1,578	2,107	2,574
Medical services	255	191	133	166	525	509	463	728	1,199
Prescription drugs	181	137	257	203	313	436	401	512	636
Medical supplies	30	52	39	68	69	73	99	129	194
Personal care products and services	291	375	353	327	510	589	516	651	994
Education	304	1,047	253	287	339	598	735	841	2,842
Life and other personal insurance	73	94	70	106	150	212	228	293	698

[~~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~~]

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	5,320	5,568	5,911	5,730	6,479	6,642	7,143	11,136
Apparel	2,234	1,202	2,148	1,695	1,705	1,819	2.038	3,236
Health insurance	716	313	488	730	1,356	1,444	1,891	2,394
Medical services	255	741	208	330	443	479	707	1,259
Prescription drugs	113	192	295	204	268	321	349	584
Medical supplies	36	94	8	51	116	73	85	173
Personal care products and services	530	320	286	379	464	479	518	1,098
Education	2,301	508	133	491	345	668	826	3,017
Life and other personal insurance	49	50	116	83	155	161	275	598

[~~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~~]

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	7,448	6,536	7,364	7,007	7,061	7,526	8,919	11,747
Apparel	2,236	1,482	1,888	2,407	2,063	2,210	2,185	3,305
Health insurance	821	362	525	463	1,036	1,284	1,606	2,357
Medical services	687	278	194	302	357	602	694	1,202
Prescription drugs	278	97	253	233	251	326	375	559
Medical supplies	50	19	35	39	58	82	101	190
Personal care products and services	367	248	521	541	386	532	552	951
Education	1,175	239	465	296	622	580	786	2,953
Life and other personal insurance	122	22	81	59	136	242	209	636

[~~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~~]

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 reputably 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: April 17, 2012

FILED WITH LRC: May 9, 2012 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, June 25, 2012, 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, July 2, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Ms. Diana L. Barber, General Counsel, Kentucky Higher, Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-7293, phone, (502) 696-7298, fax (502) 6960-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Diana L. Barber, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures to be followed by the Authority in garnishing a defaulted student loan borrower's wages for payment of the borrower's student loan debt, as well as the procedures for a borrower to request a hearing on a garnishment and procedures for conducting that hearing.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the requirements of the Higher Education Act of 1965, as amended, and its accompanying regulations regarding the collection of defaulted student loan debts.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes permit the Authority to collect defaulted student loan debts through administrative wage garnishment and to conduct administrative hearings relating to the wage garnishment.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by setting forth the procedures to be followed during the administrative wage garnishment process as well as the hearing process.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation will reflect the current poverty level and consumer expenditure figures published by the federal government.

(b) The necessity of the amendment to this administrative regulation: Current poverty level and consumer expenditure figures are necessary to assure a current and accurate standard for determining the validity of a claim of extreme financial hardship. 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.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Student loan borrowers who 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 2011, approximately 3,800 notices of wage garnishment were sent and received by student loan borrowers. During the same period, 53 of those student loan borrowers requested a hearing regarding the wage garnishment. Of the 53 hearing requests received, 43 were requested on the basis of extreme financial hardship.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take in order to comply with this administrative regulation or amendment: Each defaulted student loan borrower who objects to the garnishment of his/her wages on the basis of extreme financial hardship will be required to complete a request for hearing form as well as an affidavit of finances in order to establish his/her claim.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to the entities noted above as all costs associated with the hearing request process are borne by the Authority.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Those borrowers who complete the hearing request form and affidavit of finances will receive a hearing on the issue of whether garnishment of their wages would constitute an extreme financial hardship.

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

(a) Initially: There are no costs to student loan borrowers associated with the implementation of the amendment to this administrative regulation. Forms for requesting a hearing and for providing financial information to the Authority are provided to the borrowers at no cost to the borrower. The Authority bears any costs associated with the request for hearing process.

(b) On a continuing basis: Same as (5)(a) above.

(6) What is the source of the funding to be used for the 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.

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 division of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.744(1), KRS 164.748(2), (4), (10), and (20), 164.753(2), 20 U.S.C. §1071 through 1087(2), §1095a, 34 C.F.R. §682.410(b)(9) and (10).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency

(including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The administrative regulation will result in no additional expenditures by or revenues to the Authority during the first full year of its effectiveness.

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not generate any revenue.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Cite the federal statute or regulation constituting the federal mandate. 20 U.S.C. §1095a, 34 C.F.R. §682.410(b)(10)

2. State in sufficient detail the state compliance standards. This regulation provides for the garnishment of the disposable pay of a borrower who has defaulted in making payments on a loan guaranteed pursuant to Title IV, Part B, of the federal act and establishes the procedures for requesting and conducting a hearing related to the garnishment of the disposable pay. At least thirty (30) days before the initiation of garnishment proceedings, the Authority shall mail to the borrower's last known address a written notice of the nature and amount of the debt, the intention of the Authority to initiate proceedings to collect the debt through deductions from the borrower's pay, and an explanation of the borrower's rights. In the absence of evidence to the contrary, a borrower shall be considered to have received the notice five (5) days after it was mailed by the Authority. The Authority shall offer the borrower an opportunity to inspect and copy Authority records related to the debt and an opportunity to enter into a written repayment agreement with the Authority under terms agreeable to the Authority. The Authority shall offer the borrower an opportunity for a hearing concerning the existence or the amount of the debt and the terms of the repayment schedule under the garnishment order. The Authority shall provide a hearing, which, at the borrower's option, may be oral or written, if the borrower submits a written request for such a hearing. The time and location of the hearing shall be established by the Authority. An oral hearing may, at the borrower's option, be conducted either in person or by telephone conference. The Authority shall provide a hearing to the borrower in sufficient time to permit a decision, in accordance with the procedures prescribed in the administrative regulation, to be rendered within sixty (60) days after the Authority's receipt of the borrower's hearing request. The hearing official appointed by the Authority to conduct the hearing may not be under the supervision or control of the head of the Authority. The hearing official shall issue a final written decision. If the borrower's written request is received by the Authority on or before the 15th day following the borrower's receipt of the notice of the nature and amount of the debt, the intention of the Authority to initiate proceedings, and an explanation of the borrower's rights, the Authority may not issue a withholding order until the borrower has been provided the requested hearing. If the borrower's written request is received by the Authority after the 15th day following the borrower's receipt of the notice, the Authority shall provide a hearing to the borrower in sufficient time that a decision, in accordance with the procedures prescribed in the administrative regulation, may be rendered within sixty (60) days, but shall not delay issuance of a withholding order. This administrative regulation further provides that if the debtor does not submit required documentation in a timely fashion, then he has not met his burden of substantiating his case. Additionally, if a defense has previously been raised and refuted by the Authority, then the hearing officer must give deference to a prior decision of the Authority. Also, if the debtor is raising for the first time in the administrative wage garnishment hearing a defense that should have been raised at the point of default or some prior action, then the debtor shall be deemed to have not exhausted his appropriate remedies, and the hearing officer may stay the hearing pending consideration of the dispute through the appropriate remedy. Finally, the administrative regulation provides the hearing officer with guidelines to follow which allow him to consistently construe and apply the concept of "extreme financial hardship." In order to prove "extreme financial hardship," a debtor must how, if his income is above 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 established by the Authority. An oral hearing may, at the borrower's option, be conducted either in person or by telephone conference. The Authority shall provide a hearing to the borrower in sufficient time to permit a decision, in accordance with the procedures that the Authority may prescribe,

to be rendered within sixty (60) days after the Authority's receipt of the borrower's hearing request. The hearing official appointed by the Authority to conduct the hearing may not be under the supervision or control of the head of the Authority. The hearing official shall issue a final written decision. If the borrower's written request is received by the Authority on or before the 15th day following the borrower's receipt of the notice of the nature and amount of the debt, the intention of the Authority to initiate proceedings, and an explanation of the borrower's rights, the Authority may not issue a withholding order until the borrower has been provided the requested hearing. If the borrower's written request is received by the Authority after the 15th day following the borrower's receipt of the notice, the Authority shall provide a hearing to the borrower in sufficient time that a decision, in accordance with the procedures that the Authority may prescribe, may be rendered within sixty (60) days, but shall not delay issuance of a withholding order. The Authority may not garnish the wages of a borrower whom it knows has been involuntarily separated from employment until the borrower has been re-employed continuously for at least 12 months. Unless the Authority receives information that the Authority believes justifies a delay or cancellation of the withholding order, it shall send a withholding order to the employer within twenty (20) days after the borrower fails to make a timely request for a hearing, or, if a timely request for a hearing is made by the borrower, within twenty (20) days after a final decision is made by the Authority to proceed with garnishment. The employer shall deduct and pay to the Authority from a borrower's wages an amount that does not exceed the lesser of fifteen (15) percent of the borrower's disposable pay for each pay period or the amount permitted by 15 U.S.C. §1673, unless the borrower provides the Authority with written consent to deduct a greater amount.

4. In detail, state whether this administrative regulation will impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. If the promulgating administrative body is permitted to select from within a range, state the reasons for the specific selection. Discuss each state requirement that is stricter than the federal mandate in a separate paragraph. The administrative regulation does not impose stricter requirements than the federal mandate. The federal statute and regulation do not specify specific hearing procedures with the exception that the hearing must be conducted by an independent hearing officer and not an employee of the Authority, the hearing must be conducted and a decision rendered within sixty (60) days after the receipt of the request for a hearing, and that the hearing officer's decision is final (in contrast to KRS Chapter 13B that specifies that the hearing officer renders a "recommended" order subject to finalization by the board). The administrative regulation complies with these requirements. The remaining policies and procedures for requesting and conducting a hearing are left to the discretion of the guaranty agency under the language that the hearing must be conducted "in accordance with the procedures that the agency may prescribe. The Authority provides the debtor with the opportunity for a hearing to dispute the existence, amount or repayment of the debt. The administrative regulation sets out the procedures for requesting a hearing, the appointment of an impartial hearing officer, the time limits for requesting a hearing and the procedures for conducting a hearing, and the procedures for appealing the decision of the hearing officer to the board. This administrative regulation further provides that if the debtor does not submit required documentation in a timely fashion, then he has not met his burden of substantiating his case. Additionally, if a defense has previously been raised and refuted by the Authority, then the hearing officer must give deference to a prior decision of the Authority. Also, if the debtor is raising for the first time in the administrative wage garnishment hearing a defense that should have been raised at the point of default or some prior action, then the debtor shall be deemed to have not exhausted his appropriate remedies, and the hearing officer may stay the hearing pending consideration of the dispute through the appropriate remedy. Finally, the administrative regulation provides the hearing officer with guidelines to follow which allow him to consistently construe and apply the concept of "extreme financial hardship." In order to prove "extreme financial hardship," a debtor must show, if his income is above the poverty level, that his expenses are necessary to the health, safety, or continued employment of the debtor. If the expenses of the debtor exceed the standards derived from data published by the Bureau of Labor Statistics, then the excess expenses are presumed unnecessary and are not considered in the determination unless the debtor can demonstrate that the expenses are necessitated as the result of extraordinary circumstances beyond his control, such as the cost of unreimbursed medical care. The final decision of the hearing officer may be appealed to and reviewed by the Authority board on request of either party. An appeal from the hearing officer's decision shall follow the standard that the Board shall uphold the hearing officer's decision unless it is clearly unsupported by the evidence.

5. 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.

GENERAL GOVERNMENT CABINET
Kentucky State Board of Licensure for Professional Engineers and Land Surveyors
(Amendment)

201 KAR 18:220. Administrative hearings.

RELATES TO: KRS[~~Chapter~~] 13B, 322.290(4)
STATUTORY AUTHORITY: KRS 13B.170(1), 322.290(4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 322.290(4) requires[~~332.290(4) authorizes~~] the board to promulgate administrative regulations to carry out the conduct of proceedings before it. KRS 13B.170(1) authorizes the board to promulgate administrative regulations necessary to carry out the provisions of that chapter. This administrative regulation establishes procedural guidelines for administrative hearings as authorized by KRS 322.290(4) and [~~KRS~~] 13B.170(1).

Section 1. Definitions. (1) "Action" means a charge brought pursuant to[~~under~~] this administrative regulation and KRS Chapter 13B.

(2) "Administrative complaint" means a written accusation filed by the board's general counsel with the board and with the Office of the Attorney General, Administrative Hearings Division alleging a violation by a licensee of KRS Chapter 322 or a provision of 201 KAR Chapter 18[~~"Board" means the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors~~].

(3) "Administrative hearing" or "hearing" is defined by KRS 13B.010(2)[~~"Charge" means a written accusation filed with the division by the board alleging a violation by a licensee~~].

(4) "Board" means the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors[~~"Complaint" means a factual statement made by any person or organization to the board alleging a possible violation of KRS Chapter 322 or any administrative regulation adopted by the board~~].

(5) "Charge" means a written accusation of a violation of a provision of KRS Chapter 322 or of 201 KAR Chapter 18, contained in an administrative complaint[~~"Consent decree" means an order entered by the board with the agreement of a respondent~~].

(6) "Consent decree" means an order entered by the board with the agreement of a respondent[~~"Default" means a failure of a respondent to file an answer to a charge, to attend or participate in a prehearing conference, hearing or other stage of the administrative hearing process, or to comply with the orders of a hearing officer~~].

(7) "Default" means a failure of a respondent to file an answer to an administrative complaint, to attend or participate in a prehearing conference, hearing, or other stage of the administrative hearing process, or to comply with the orders of a hearing officer[~~"Division" is defined by KRS 13B.010(8)~~].

(8) "Division" is defined by KRS 13B.010(8)[~~"Final order" is defined by KRS 13B.010(6)~~].

(9) "Final order" is defined by KRS 13B.010(6)[~~"Hearing officer" is defined by KRS 13B.010(7)~~].

(10) "Hearing officer" is defined by KRS 13B.010(7)[~~"Licensee"~~

~~means an individual or business entity licensed to practice engineering or land surveying in this Commonwealth under KRS 322.040 or 322.060~~].

(11) "Investigation review advisor" means a present or former member of the board, selected by the board chairman in consultation with the executive director, to independently review an investigation and provide the executive director with his or her opinion as to the propriety of filing an administrative complaint against the subject of the investigation, and to make suggestions regarding the nature of the charges, the appropriate penalty, and terms for settlement[~~"Notice" means a notice of administrative hearing satisfying the requirements of KRS 13B.050(3)~~].

(12) "Letter of complaint" means a factual statement made in writing, by a person or organization, to the board, alleging a possible violation of a provision of KRS Chapter 322 or 201 KAR Chapter 18[~~"Investigation review committee" means a committee formed to determine whether there is evidence to support a charge and shall consist of the executive director and two (2) board members appointed by chairman of the board in consultation with the executive director~~].

(13) "Licensee" means an individual or business entity licensed to practice engineering or land surveying in this Commonwealth pursuant to KRS Chapter 322[~~"Respondent" means a licensee concerning whom the investigation review committee has determined that there is sufficient evidence to support a charge~~].

(14) "Notice" means a notice of administrative hearing satisfying the requirements of KRS 13B.050(3)[~~"Settlement conference" means a conference between board staff and a respondent and his attorney, if any, to attempt to resolve matters raised in a complaint or charge~~].

(15) "Party" is defined by KRS 13B.010(3)[~~"Violation" means any act or failure to act that is in conflict with any provision of KRS Chapter 322 or any administrative regulation adopted by the board~~].

(16) "Respondent" means a licensee who is the subject of an investigation by the board for a violation of KRS Chapter 322 or 201 KAR Chapter 18.

(17) "Settlement conference" means a conference between board staff and a respondent and his or her attorney, if any, to attempt to resolve matters raised in an administrative complaint or charge.

(18) "Violation" means an act or failure to act that is in conflict with a provision of KRS Chapter 322 or 201 KAR Chapter 18.

Section 2. Letter of Complaint, and Investigation[~~Complaints~~]. (1) A letter of complaint shall be in writing, be signed by the individual making the allegations[~~complainant~~], and shall allege facts showing why that individual[~~the complainant~~] believes that a violation has occurred.

(2) An investigation shall be made of every complaint.[~~However, if it appears to the executive director that no violation has occurred even if the alleged facts are true, no investigation shall be conducted and the complainant shall be notified of his decision.~~]

(3) An investigation may also be made without the receipt of a letter of complaint if[~~when~~] information within the knowledge of the board or board staff indicates that a violation may have been committed.[~~(4) The investigative report shall be submitted to the investigation review committee.~~

~~(5) If the investigation review committee determines that there is not sufficient evidence to support a charge, the matter shall be closed and the complainant notified of the decision.~~

~~(6)(a) If the investigation review committee finds sufficient evidence to support a charge, the committee may direct board staff to attempt to resolve the complaint in a settlement conference,~~

~~(b) If a settlement is not reached, the committee shall cause a charge or charges to be filed.~~

~~(c) The investigation review committee may recommend non-binding terms for negotiation at a settlement conference.~~]

Section 3. Disposition Following Investigation[~~Charges~~]. (1) Following the completion of the investigation, if it appears to the executive director that no violation has occurred, or that the matter does not warrant further action, the executive director shall terminate any further proceedings and the matter shall be closed.[~~Charges shall be in plain language in the pleading form used in the circuit courts of this Commonwealth and signed by the general counsel.~~]

(2) If, following the completion of the investigation, it appears to the executive director that the respondent may have committed one (1) or more violations sufficient to warrant a charge or charges against that licensee, then to resolve the matter, the executive director shall:

(a) Issue a letter of admonishment to the respondent;

(b) Negotiate a proposed consent decree with the respondent, which shall, after execution by the respondent, be presented to the board for approval or rejection; or

(c) Cause an administrative complaint to be filed.

(3) If a proposed consent decree is rejected by the board, the executive director shall either try to resolve the matter with another proposed consent decree, or shall proceed with an administrative complaint;

(4) The board may enter into a settlement conference following the completion of the investigation.

(5) Prior to causing an administrative complaint to be filed, the executive director may request that the board chairman designate one (1) or two (2) investigative review advisors who shall independently review the investigation, and shall submit to the executive director, their independent opinions as to the propriety of filing an administrative complaint against the subject of the investigation, and suggestions regarding the nature of the charges, the appropriate penalty, and terms for settlement.

(6) A former board member who serves as an investigative review advisor shall be compensated at the same rate as provided for a board member who so serves.

(7) A board member who serves as an investigative review advisor for a specific disciplinary action, shall not thereafter participate in the determination of a final order in that same action, except that he or she may participate in the consideration of a proposed consent decree.

(8) An individual who has filed a letter of complaint shall be notified of the disposition of the subject matter upon its resolution.[~~A complaint shall not be deemed a charge under KRS 322.200 until the complaint has been investigated and the investigation review committee has determined that there is sufficient evidence to support a charge.~~]

Section 4. Administrative Complaints[~~Actions~~]. An administrative complaint shall be in plain language in the pleading form used in the circuit courts of this Commonwealth and shall be signed by the board's general counsel.[~~(1) An action is commenced by sending notice and a copy of the charges to the licensee's address on file with the board, with a copy to the division, consistent with the provision of KRS Chapter 13B.~~

~~(2) The board shall file proof of notice with the hearing officer.~~]

Section 5. Actions. (1) An action shall be commenced by sending notice and a copy of the administrative complaint to the licensee at the address for the licensee on file with the board, with a copy to the Office of the Attorney General, Hearing Officer Division consistent with the provision of KRS Chapter 13B.

(2) The board shall file proof of notice with the hearing officer.

(3) Within twenty (20) days of notice, a respondent shall file an answer with the board and with the hearing officer.

(4) The hearing shall be conducted according to the provisions of KRS Chapter 13B.

Section 6. Default[~~Defaults~~].[~~(1)~~] A default shall be deemed a confession of all material allegations contained in the administrative complaint[~~charge~~].[~~(2) Upon default, the hearing officer shall proceed under KRS 13B.080(6).~~]

Section 7. Amended Pleadings[~~Prehearing Conference~~]. (1) A party, as a matter of right, may amend a pleading.

(a) A pleading shall not be amended later than thirty (30) days before a scheduled hearing.

(b) A party seeking to amend a pleading within a period less than thirty (30) days before a scheduled hearing shall amend a

pleading only by consent of the adverse party or by leave of the hearing officer, and leave shall be freely given if justice so requires.[~~When a hearing officer schedules a prehearing conference and no settlement conference has been conducted, the hearing officer shall direct the parties to meet at the board office one (1) hour prior to the scheduled prehearing conference for a settlement conference.~~]

(2) If an amended pleading introduces new legal or factual issues that cannot reasonably be met by the opposing party prior to the scheduled hearing, the hearing officer shall continue the hearing.[~~If a settlement is reached, the hearing officer shall adjourn the conference.~~

~~(3) If a settlement is not reached the hearing officer shall proceed under KRS Chapter 13B.~~]

Section. 8. Final Order and Consent Decree[~~Amended pleadings~~]. (1) If an administrative complaint has been filed, and the matter resolved by means of a consent decree, the consent decree entered by the board is a final order as established by KRS Chapter 13B.[~~A party, as a matter of right, may amend a pleading not later than thirty (30) days before a scheduled hearing. Otherwise, a party may amend a pleading only by consent of the adverse party or by leave of the hearing officer, and leave shall be freely given when justice so requires.~~]

(2) A consent decree shall not be binding on the parties until approved by the board.[~~If an amended pleading introduces new legal or factual issues which cannot reasonably be met by the opposing party prior to the scheduled hearing, the hearing officer shall continue the hearing.~~]

(3) If a final order or consent decree provides that the executive director shall suspend or revoke a license for failure of the licensee to comply with the terms of the final order or consent decree, the executive director shall suspend or revoke the license for failure to comply according to the terms of the final order or consent decree.

(4) If a final order or consent decree does not include a provision for suspension or revocation of a license for the licensee's failure to comply with the terms of the final order or consent decree, and the executive director has probable cause to believe that a respondent has violated the terms of a final order or consent decree, the executive director shall cause a show cause order, over the signature of the board's general counsel, to be issued to the respondent, with a copy to the Office of the Attorney General, Hearing Officer Division.

(5) The show cause order shall meet the requirements of a notice and shall be treated as an administrative complaint for procedural purposes.

Section 9. Publication[~~Final order and consent decree~~]. At least annually, a summary of all final orders and consent decrees shall be published.[~~(1) If a charge has been filed, a consent decree entered by the board is a final order as established by KRS Chapter 13B.~~

~~(2) A consent order shall not be binding on the parties until approved by the board.~~

~~(3) If a final order or consent decree provides that the executive director shall suspend a license for failure of the licensee to comply with the terms of the final order or consent decree, he shall impose the suspension for failure to comply according to the terms of the final order or consent decree.~~

~~(4) If a final order or consent decree does not include that provision, and the executive director has probable cause to believe that a respondent has violated the terms of any final order or consent decree, the executive director shall cause a show cause order, over the signature of the general counsel, to be issued to the respondent, with a copy to the division.~~

~~(5) The show cause order shall meet the requirements of a notice and shall be treated as a charge for procedural purposes.~~

~~Section 10. At least annually, a summary of all final orders and consent decrees shall be published in a format selected by the board.~~]

B. DAVID COX, Executive Director

APPROVED BY AGENCY: May 10, 2012

FILED WITH LRC: May 10, 2012 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 21, 2012 at 1:30 p.m., local time, at 160 Democrat Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing of their intent to attend no later than five workdays prior to the date of the hearing. If no written notification of an individual's intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. If the public hearing is held, 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, in which case the person requesting the transcript shall have the responsibility of paying for same. A recording may be made in lieu of a transcript under the same terms and conditions as a transcript. 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 2, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jonathan Buckley, General Counsel, Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, phone (502) 573-2680, fax (502) 573-6687.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jonathan Buckley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes procedural guidelines for administrative hearings as authorized by KRS 322.290(4) and 13B.170(1).

(b) The necessity of this administrative regulation: KRS 322.290(4) requires the board to promulgate administrative regulations reasonably necessary for the fair conduct of the proceedings before it.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation contains the details and requirements of the conduct of proceedings before it.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation sets the requirements of the conduct of proceedings before it so that the board can administer those proceedings and inform licensees of those 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: This amendment reorganizes and refines some of the regulation's language for purposes of clarity, adds some definitions and alphabetizes the definition section, provides for enhancement of due process by prohibiting board members who had served as investigation review advisors from participating in the determination of a final order in a non-consensual resolution of a disciplinary action, and provides for the possibility of former board members serving as investigation review advisors.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to provide clarity to the regulation, to enhance due process in the consideration and determination of a final order in non-consensual resolutions of disciplinary actions, and to provide for the participation of former board members as investigation review advisors.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 322.290(4) since that statute requires the board to establish procedures for the conduct of proceedings before it.

(b) The necessity of this administrative regulation: KRS 322.290(4) requires the board to promulgate administrative regulations to carry out the conduct of proceedings before it.

(d) How the amendment will assist in the effective administration of the statutes: This amendment establishes the procedures

for administrative hearings before the board as mandated by KRS 322.290(4), provides clarity of those procedures, and enhances due process in those procedures.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the approximate 1,300 licensed professional land surveyors, 11,000 licensed professional engineers, and the board itself.

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

(a) A detailed explanation of the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional actions will be required of either the licensees or the board.

(b) An estimate of the costs imposed on entities identified in question (3) in complying with this administrative regulation or amendment: There is no additional cost associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will result in clarity of the process of administrative hearings before the board, expand the pool of individuals available to act as investigative review advisors, and enhance due process afforded any licensee who is subject to a disciplinary action by the board by prohibiting any individual who has served as an investigative review advisor from participating in the determination of the final order of the board in any non-consensual resolution of the disciplinary action.

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

(a.) Initially: None

(b.) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Restricted Agency Funds. The board receives no general or federal funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased as a result of this regulation.

(9) TIERING: Is tiering applied? Tiering was not used because this regulation should not disproportionately affect any particular group of people.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky State Board of Licensure for Professional Engineers and Land Surveyors.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 322.290(4); KRS 13B.170(1)

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

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

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

(c) How much will it cost to administer this program for the first year? There will be no additional cost involved in administering this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost involved in administering this program for the subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no additional cost or revenue generated by this amendment.

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:450. Alternative program.

RELATES TO: KRS 314.085, 314.091, 314.171, 314.470,

STATUTORY AUTHORITY: KRS 314.131(1), (2), 314.171(3)

NECESSITY, FUNCTION AND CONFORMITY: KRS 314.171 authorizes the board to establish an impaired nurses committee to promote early identification, intervention, treatment, and rehabilitation of nurses who may be impaired by reason of illness, alcohol or drug abuse, or as a result of any physical or mental condition. This administrative regulation provides procedures for the implementation of an alternative program.

Section 1. Definitions. (1) "Approved treatment provider" means an alcohol or drug treatment provider that meets the standards as set out in Section 7 of this administrative regulation.

(2) "Board" means the Board of Nursing.

(3) "Chemically-dependent individual" means a person whose ability to practice nursing according to acceptable and prevailing standards of care is or may be impaired by reason of alcohol or drug abuse.

(4) "Program" means the Kentucky Alternative Recovery Effort for Nurses which is the alternative program operated by the board for nurses.

Section 2. Admission and Denial to the Program. (1) In order to gain admission to the program, an individual shall:

(a) Be an advanced practice registered nurse, a registered nurse or a licensed practical nurse licensed in the Commonwealth of Kentucky, a holder of a multistate licensure privilege pursuant to KRS 314.470, or an applicant for a credential issued by the board;

(b) Request in writing participation in the program;

(c) Admit in writing to being a chemically-dependent individual;

(d) Agree in writing to the terms set forth in the program agreement;

(e) Obtain a current chemical dependency assessment, which may include a complete physical and psychosocial evaluation performed by a licensed or certified medical, mental health or psychological specialist in the field of drug, alcohol, or other chemical dependency;

(f) Provide any evaluation and treatment information, disclosure authorizations, and releases of liability as may be requested by the program staff;

(g) Agree to abide by the programs staff's determination regarding employment as a nurse pending admission; and

(h) Have attended or be enrolled in an approved treatment provider program.

(2) Admission to the program shall be denied if the applicant:

(a) Does not meet the eligibility requirements for admission as set by subsection (1) of this section; or

(b) Is not eligible for licensure in Kentucky or if the board does not grant authorization to practice under KRS 314.470 Article V(f) or 201 KAR 20:500, Section 3(2).

(3) Admission to the program may be denied if the applicant:

(a) Diverted scheduled substances for other than self-administration;

(b) Will not substantially benefit from participation in the pro-

gram;

(c) Has a criminal conviction related to the sale or distribution of scheduled substances or legend prescription drugs; or

(d) Has been terminated from alternative program participation in Kentucky or any other state.

(4) In the case of an applicant for a credential issued by the board, admission to the program shall be conditioned upon obtaining licensure in Kentucky. Failure to obtain licensure shall result in denial of admission to the program.

Section 3. Requirements for Participation in the Program. (1) A participant shall:

(a) Enter into a program agreement; and

(b) Comply with all of the terms and conditions of the program agreement for the time period specified in the agreement.

(2) The program agreement shall be updated and modified as needed to address the participant's progress in recovery and may include any of the following:

(a) A requirement that the participant undergo and successfully complete chemical dependency treatment by an approved treatment provider;

(b) A requirement that the participant agree not to practice in any capacity in a patient care setting or one which requires licensure until approved to do so by the program;

(c) A requirement that the participant undergo and successfully complete the continuing care program recommended by the approved treatment provider and designated in the program agreement. The continuing care program may include individual or group counseling or psychotherapy;

(d) A requirement that the participant remain free of alcohol, mood-altering substances including herbal preparations, over-the-counter medications containing alcohol or mood-altering substances, and any other medication except for substances prescribed by a practitioner authorized by law to prescribe for a specific medical condition;

(e) A requirement that the participant inform all treating health care practitioners of the participant's chemical dependency and recovery status prior to receiving a prescription for any medication, mood-altering substance, or herbal preparation;

(f) A requirement, when a participant must take any substance prescribed or recommended by a practitioner, that the participant provide the program written documentation from the practitioner that the use of the substance does not impair the participant's ability to practice nursing in a safe and effective manner and will not interfere with the participant's recovery program provided the substance is used in accordance with the prescription or recommendation;

(g) A requirement that if the participant is prescribed, recommended, or dispensed any medication by a practitioner, the participant shall cause the practitioner to report the medication to the program. The report shall include the diagnosis, the name of the medication, the quantity prescribed, any refills or any other information about the medication requested by the program staff, and shall be submitted to the program within the time specified in the program agreement. Consultation with a physician addictionologist may be required by the program and the participant shall agree to abide by any determination made by the physician addictionologist;

(h) A requirement that the participant cause all treatment providers and counselors to provide any reports as may be required by the program at the intervals specified in the program agreement;

(i) A requirement that the participant submit to random alcohol and drug testing when requested by the program, and that the participant comply with all requirements of the program concerning random alcohol and drug testing;

(j) A requirement that the participant attend health professionals' support group, twelve (12) step group meetings, or other group meetings as specified by the program agreement, and that the participant verify attendance at these meetings by signature of a group or meeting representative and submit the signatures to the program;

(k) A requirement that the participant comply with the employment and nursing practice restrictions specified by the program agreement;

(l) A requirement that the participant sign a waiver which would allow the program to communicate with the participant's treatment providers, counselors, employers, work site monitors, law enforcement officials and health professionals' support group facilitators, if applicable;

(m) A requirement that the participant be responsible for paying the costs of the physical and psychosocial assessment, chemical dependency treatment, and random alcohol and drug testing, or any other costs incurred in complying with the program agreement;

(n) A requirement that the participant submit a written personal report to the program at the intervals specified by the program agreement;

(o) A requirement that the participant meet in person with a program representative at the intervals specified by the program agreement;

(p) A requirement that the participant shall not work as a nurse in another Nurse Licensure Compact state without the permission of this state and the other state; and

(q) A requirement that the participant comply with all other terms and conditions specified in the program agreement which the program staff determines are necessary to ensure that the participant is able to practice nursing in accordance with acceptable and prevailing standards of safe nursing care.

(3)(a) By participating in the alternative program, the participant waives all rights to a hearing on any underlying complaint or any decision to terminate the participant from the alternative program pursuant to Section 5 of this administrative regulation, as well as any right to appeal such decision.

(b) The participant shall acknowledge in writing their understanding and consent to paragraph (a) of this subsection.

Section 4. Successful Completion of the Program. (1) A participant successfully completes the program when the participant fully complies with all of the terms of the program agreement for the period as specified in the agreement.

(2) When a participant successfully completes the program, the program shall notify the participant of the successful completion in writing. Once the participant receives this written notification of successful completion of the program, the participant shall no longer be required to comply with the program agreement.

(3) A participant who successfully completes the program shall not be reported to the National Council of State Boards of Nursing's disciplinary data bank.

Section 5. Causes for Termination from the Program. A participant may be terminated from the program for the following causes:

(1) Noncompliance with any aspect of the program agreement;

(2) Receipt of information by the board which, after investigation, results in disciplinary action by the board other than a reprimand; or

(3) Being unable to practice according to acceptable and prevailing standards of safe nursing care.

Section 6. Resignation From the Program. (1) A participant may resign from the program.

(2) Upon resignation, the participant shall sign an agreed order in conformity to 201 KAR 20:161, Section 2(4) voluntarily surrendering the nursing license.

Section 7. Standards for Approved Treatment Providers. In order to be an approved treatment provider, the treatment provider shall:

(1) Be:

(a) Accredited by the Joint Commission for the Accreditation of Healthcare Organizations or be state-certified and shall have operated as a chemical dependency treatment program for a minimum of one (1) year; or

(b) A licensed or certified specialist in the field of chemical dependency treatment as outlined in 201 KAR 20:163, Section 2(2);

(2) Provide inpatient or outpatient care;

(3) Be based on a twelve (12) step program of Alcoholics Anonymous/Narcotics Anonymous or equivalent support group;

(4) Provide development of an individualized treatment and

aftercare program to meet the specific needs of the participant and make recommendations regarding an ongoing rehabilitation plan;

(5) Be based on an evaluation that meets the standards of 201 KAR 20:163, Section 3;

(6) Provide clearly-stated costs and fees for services, and offer fee schedules and flexibility in payment plans to accommodate participants who are underinsured or experiencing financial difficulties;

(7) Demonstrate willingness to provide information to the alternative program regarding the status of the participant after appropriate consents to release information are obtained;

(8) Work closely with the alternative program staff to assure proper implementation and administration of policies and procedures related to the program;

(9) Maintain timely and accurate communication with program staff, including assessments, diagnosis, prognosis, discharge summary and follow-up recommendations as well as reports on significant events which occur in treatment that are related to impairment and the ability to practice safely;

(10) Provide written reports of progress at intervals as requested by program staff.

Section 8. An individual who is admitted to the program but does not hold a Kentucky nursing license shall pay a participation fee of fifty (50) dollars per year.

Section 9. (1) A participant in the alternative program who moves to another jurisdiction may transfer to the new jurisdiction's alternative program.

(2) If the participant is accepted into the new jurisdiction's alternative program, the participant may relinquish his or her Kentucky license pursuant to 201 KAR 20:510.

(3) The provisions of Section 6 of this administrative regulation shall not apply in this situation.

(4) If the participant relinquishes his or her Kentucky license, the alternative program in Kentucky shall cease monitoring the participant.

CAROL KOMARA, President

APPROVED BY AGENCY: April 12, 2012

FILED WITH LRC: April 26, 2012 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD A public hearing on this administrative regulation shall be held on June 25, 2012 at 1:00 p.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by June 18, 2012, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business July 2, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 564-4251, Email: nathan.goldman@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: It implements the requirements for the alternative to discipline program for substance use disorders.

(b) The necessity of this administrative regulation: The Board is required by statute to promulgate this regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By implementing the statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By implementing the 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 amendment does two things. First, it clarifies that the alternative program is voluntary and a nurse who is accepted into it waives the right to a hearing or to an appeal of the decision to terminate the nurse from the program for violations as set forth in the administrative regulation. Second, it provides a process for an individual enrolled in the alternative program to transfer to another state's alternative program when they move out of state. It allows them to relinquish their license without penalty and allows Kentucky to transfer the monitoring of that person to the other state's alternative program.

(b) The necessity of the amendment to this administrative regulation: It was necessary to clarify the first issue, as questions have been raised by participants. The second issue was needed to conserve resources for nurses who relocate out of state.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to implement the alternative program.

(d) How the amendment will assist in the effective administration of the statutes: By clarifying these two issues.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Nurses enrolled in the alternative program; the number varies, but presently there are approximately 250.

(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 not have to take any additional actions other than to acknowledge that they are aware of the first issue. If they move out of state, they will have to inform the Board and fill out the appropriate paperwork to transfer to the other state's alternative program.

(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 additional cost that would be required to comply with this amendment

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

4. Estimate the effect of this administrative regulation on the expenditures and revenues 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 additional costs.

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

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

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

RELATES TO: KRS 314.071(2)

STATUTORY AUTHORITY: KRS 314.131(1), (2), 314.137

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(2) requires the board to license duly qualified applicants engaged in the practice of nursing. KRS 314.137 authorizes the board to establish the credentialing requirements of dialysis technicians. KRS 314.131(1) authorizes the board to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 314. This administrative regulation establishes the procedures for a nurse or a dialysis technician who wishes to relinquish a license or credential prior to its expiration.

Section 1. (1) A person holding a license or credential issued by the board may voluntarily relinquish that license or credential prior to its expiration date.

(2) The request to relinquish shall be in writing to the board.

(3) The board shall allow the relinquishment of a license or credential unless the person is[~~:~~

~~(a)~~] currently under investigation[~~or being monitored~~] by the board[~~; or~~

~~(b) subject to disciplinary action by any board of nursing~~].

Section 2. A person who voluntarily relinquishes a license or credential according to the provisions established in Section 1 of this administrative regulation shall be reinstated by meeting the applicable requirements for each respective license or credential established in:

(1) 201 KAR 20:225, Section 1;

(2) 201 KAR 20:056, Section 6;

(3) 201 KAR 20:411, Section 9; and

(4) 201 KAR 20:470, Section 4.

CAROL KOMARA, President

APPROVED BY AGENCY: April 12, 2012

FILED WITH LRC: April 26, 2012 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD A public hearing on this administrative regulation shall be held on June 25, 2012 at 1:00 p.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by June 18, 2012, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business July 2, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 564-4251, Email: nathan.goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: It provides a process for individuals to voluntarily relinquish their nursing licenses prior to lapse.

(b) The necessity of this administrative regulation: It is necessary to specify a process for this action since it is not specified in statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is authorized to set such requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By specifying the 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 is a companion to the amendment to 201 KAR 20:450 and would allow the nurse who relocates to another state and seeks to transfer to the other state's alternative program to relinquish their license without penalty.

(b) The necessity of the amendment to this administrative regulation: The current version of the administrative regulation would not allow the relinquishment to occur in this situation.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to implement the alternative program. This step is a necessary corollary.

(d) How the amendment will assist in the effective administration of the statutes: By allowing the relinquishment in this situation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Nurses enrolled in the alternative program; the number varies, but presently there are approximately 250.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: If they move out of state, they will have to inform the Board and fill out the appropriate paperwork to transfer to the other state's alternative program and to relinquish their license in Kentucky.

(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 additional cost that would be required to comply with this amendment

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

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

cy 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 is needed.

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

4. Estimate the effect of this administrative regulation on the expenditures and revenues 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 additional costs.

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

GENERAL GOVERNMENT
Board of Physical Therapy
(Amendment)

201 KAR 22:001. Definitions for 201 KAR Chapter 22.

RELATES TO: KRS 327.010

STATUTORY AUTHORITY: KRS 327.040(11)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(11) requires the Kentucky Board of Physical Therapy to promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of KRS Chapter 327 pertaining to the practice and credentialing of physical therapists and physical therapist assistants. This administrative regulation sets forth the definitions for 201 KAR Chapter 22.

Section 1. Definitions. (1) "Board" is defined by KRS 327.010(3).

(2) "CAPTE" means Commission on Accreditation in Physical Therapy Education.

(3) "Credential" means the license or certificate issued by the board authorizing a person to practice physical therapy.

(4) "Credential holder" means a licensed physical therapist or certified physical therapist assistant who has met all requirements for credentialing in 201 KAR 22:020 and has been credentialed by the board.

(5) "Credentialing" means the process of licensing or certifying an applicant by the board.

(6) "Direct Supervision" means the physical therapist or physical therapist assistant:

(a) Shall be immediately available to direct and supervise tasks that are related to direct patient care; and

(b) Shall provide line of sight direction and supervision the majority of the time for each patient when these tasks are performed; and

(c) Telecommunications does not meet the definition of direct supervision.

(7) "Endorsement" means an applicant credentialed by another jurisdiction.

(8)[~~(7)~~] "Examination" means a board-approved examination that an applicant shall successfully pass as a requirement for credentialing.

(9)[~~(8)~~] "Full time" means employment for forty (40) hours a week.

(10)[~~(9)~~] "Inactive status" means a credential that is inactive and the credential holder shall not engage in the practice of physical therapy.

(11)[~~(10)~~] "Jurisdiction" means a licensing authority in a state or territory of the U.S.

(12)[~~(11)~~] "NPTE" means the National Physical Therapy Examination for physical therapists and physical therapist assistants.

(13)[~~(12)~~] "On-site supervision" means immediate physical accessibility within the same building.

(14) "Patient" means any person for whom physical therapy, as defined in KRS Chapter 327, is provided.

(15)[~~(13)~~] "Physical therapist assistant" means a skilled health care worker certified by the board who performs physical therapy and related duties as assigned by the supervising physical therapist.

(16)[~~(14)~~] "Reinstatement of a credential" means a renewal of a license that has lapsed.

(17)[~~(15)~~] "Supervising physical therapist" means the physical therapist who is supervising the care of a patient who is being treated by a physical therapist assistant or supportive personnel.

(18)[~~(16)~~] "Supportive personnel" means a person assisting in the provision of direct physical therapy patient care who is not credentialed by the board.

(19)[~~(17)~~] "Verification" means the process of verifying a lawful credential.

REBECCA KLUSCH, Executive Director

APPROVED BY AGENCY: May 15, 2012

FILED WITH LRC: May 15, 2012 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 21, 2012, 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 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 July 2, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Becky Klusch, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, phone (502) 429-7140, fax (502) 429-7142.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Becky Klusch

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the definitions for 201 KAR Chapter 22.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to define terms used in 201 KAR Chapter 22.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It provides the definitions to promulgate administrative regulations as required by KRS 327.040.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It defines terms used for 201 KAR Chapter 22.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds the definition of "Direct Supervision" and "Patient".

(b) The necessity of the amendment to this administrative regulation: To differentiate between onsite supervision and direct supervision.

(c) How the amendment conforms to the content of the authorizing statutes: The board is authorized to set standards for the practice of physical therapy including the use of supportive personnel.

(d) How the amendment will assist in the effective administration of the statutes: By clarifying the supervision of certified physical therapist assistants and supportive personnel.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 4,800 physical therapists and physical therapist assistants, hospitals, physical therapy clinics and other entities that provide physical therapy services.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities in (3) will be required to provide direct supervision of supportive personnel as that term is defined in the amended administrative regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Protect the health and welfare of the public.

(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. 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? 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.

4. Estimate the effect of this administrative regulation on the expenditures and revenues 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 22:053. 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) Ensure that all personnel involved in the delivery of physical therapy services are identified to the patient by name and title;

(d) 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

(e)[~~(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 prior to initiation of treatment;

(3) Upon receipt of a patient under an active plan of care from another physical therapy service, the receiving physical therapist shall:

(a) Complete an initial evaluation in compliance with Sections 2(2) and 5(1)(a)-(e) of this administrative regulation; or

(b) Ensure the evaluation and plan of care from the other physical therapy service are current and appropriate;

(c) Retain the evaluation and plan of care from the other physical therapy service in the medical record;

(d) Document the patient transfer of care in the medical record; and

(e) 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.

(c) A forty-five (45) day grace period shall be allowed upon transfer from another school district or from the start of the school year;

(d) During this grace period treatment may continue based upon the previous reassessment or initial evaluation;

(e) Reassessing each patient not otherwise noted every thirty (30) days following the initial evaluation or subsequent reassessment;

(f) Reassessing a patient whose medical condition has changed;

(5) Refer the patient to other professionals or services if the treatment or service is beyond the physical therapist's scope of practice;

(6) Be responsible for the physical therapy record of each patient;

(7) Provide services that meet or exceed the generally accepted practice of the profession;

(8) Explain the plan of care to the patient, to others designated by the patient, and to appropriate professionals;

(9) 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; and

(10) 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) Unless prohibited by law, all members of a business entity shall 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) 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.~~] 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 a cumulative of seven (7)[~~consecutive~~] work days in a sixty (60) consecutive day period shall not constitute a violation of this standard;

(2) Direct supervision, as defined by 201 KAR 22:001(6) by a physical therapist or physical therapist assistant is required when supervising supportive personnel;

(3) Not delegate procedures or techniques to the physical therapist assistant[~~or supportive personnel if it is~~] that are outside his or her scope of training, education or expertise.

(4) Not delegate procedures or techniques to supportive personnel that are outside his or her scope of training, education or expertise.

(a) Scope of training and competency for supportive personnel shall be documented and verified at least annually, and

(b) Documentation of training and competency shall be immediately available for review.

(5)[~~(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) Ensuring that if supportive personnel provide direct patient care that there is on site supervision by a physical therapist or physical therapist assistant;

(g) Ensuring that a physical therapy student fulfilling clinical education requirements shall receive on-site supervision by a physical therapist;

(h) Ensuring that a physical therapist assistant student fulfilling clinical education requirements shall receive on-site supervision of which eighty (80) percent may be by a credentialed physical therapist assistant; and

(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(4) 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[~~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: May 15, 2012

FILED WITH LRC: May 15, 2012 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 21, 2012, 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 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 July 2, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Becky Klusch, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, phone (502) 429-7140, fax (502) 429-7142.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Becky Klusch

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets out the code of ethical standards and standards of practice for Physical Therapists and Physical Therapist Assistants.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 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 delivery of physical therapy services to help ensure the safety and health of the public.

(b) The necessity of the amendment to this administrative regulation: To clarify the supervision of supportive personnel.

(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 including the use of supportive personnel.

(d) How the amendment will assist in the effective administration of the statutes: By clarifying the requirements for the supervision and use of supportive personnel.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 4,800 physical therapists and physical therapist assistants, hospitals, physical therapy clinics and other entities that provide physical therapy services.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities in (3) will be required to provide direct supervision of supportive personnel as that term is defined in the amended administrative regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Protect the health and welfare of the public.

(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. 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? 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.

4. Estimate the effect of this administrative regulation on the expenditures and revenues 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:

TOURISM, ARTS AND HERITAGE CABINET
Department of Parks
(Amendment)

304 KAR 1:040. Campgrounds.

RELATES TO: KRS 148.021, 148.029, 148.051, 148.056, 148.991

STATUTORY AUTHORITY: KRS 148.021(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 148.021(8) authorizes the Commissioner of Parks to promulgate administrative regulations relating to the operation of state park campgrounds. This administrative regulation establishes requirements for the orderly operation of state park campgrounds.

Section 1. At all state park campgrounds the following rules shall be posted and observed:

(1) Camping, unless otherwise authorized by the park manager due to a special event creating an overflow, shall be restricted to the campground.

(2) A tent, a camping vehicle, a recreational vehicle, camping equipment, or other personal property shall not be left unattended longer than twenty-four (24) consecutive hours without written permission from the park manager.

(b) Written permission pursuant to paragraph (a) of this subsection shall be based upon the best interests of the park.

(3)(a) Pets shall:

1. Be kept on a leash or otherwise restrained at all times;

2. Have current inoculations for rabies as prescribed by the campers' state of residence; and

3. Not be tied to trees or shrubs.

(b) Campers shall clean up after their pets.

(c) Campers unable to control their pets may be asked to leave the campground.

(4)(a) Sewage or gray water from tents or recreational vehicles shall not be disposed of on the premises of the campground except at a sewage disposal site.

(b) Dishes, pots, pans, and silverware shall not be washed at spigots or in bathhouses.

(c) Vehicles or equipment shall not be washed within the campground.

(5) Quiet time begins at 11 p.m. Campers shall not have visitors after 11 p.m.

(6) Campers shall not:

(a) Hang lanterns on trees or shrubs;

(b) Drive an object into a tree, shrub, sign, building, or other object or structure in the campground; or

(c) Trench or dig in the campground.

(7) Golf carts may be used on state park campgrounds with the appropriate permit.

(a) A person may purchase a golf cart permit at the campground store or any other location designated by the park manager for twenty-five (25) dollars and the permit shall be valid for seven (7) consecutive days.

(b) A person may purchase an annual golf cart permit at the campground store or any other location designated by the park manager for 100 dollars and the permit shall be valid April 1 – October 31.

(c) All permits shall be displayed prominently on the golf cart in a location designated by the park manager.

(d) A golf cart shall not be parked or left in a no-parking zone, a prohibited area, or in any area that would block traffic.

(e) State park employees and agents may use golf carts without a permit on the grounds of state park campgrounds if acting on behalf of a state park.

(8)[~~(7)~~] (a) Motorbikes, motorcycles, motor scooters, and mopeds[~~off-road vehicles~~] in the campground shall be restricted to regular roadways for use in entering and exiting only.

(b) Four (4) wheelers, all terrain vehicles, utility type vehicles, or similar vehicles may be prohibited within portions of the campground in areas designated by the park manager.

(c)[~~(b)~~] Campers and visitors shall not joy ride on any motorized vehicle[~~four (4) wheelers, golf carts, mopeds, or similar vehicles~~] within the campground.

(d)[~~(c)~~] Drivers shall be at least sixteen (16) years of age and have a valid driver's license.

(e)[~~(d)~~] Vehicles shall be properly muffled[~~muffle red~~] and shall stay on paved roads.

(f)[~~(e)~~] An exception shall be made for the use of a motorized vehicle by a person with a disability who:

1. Is using a motorized vehicle for travel to or from campground facilities; and

2. Has proof of disability such as an appropriate identification card or vehicle license plate.

(9)[~~(8)~~](a) Campsites may be reserved by telephone or via the Internet.

(b) Any campsites not reserved shall be available on a first-come, first-served basis.

(c) Check-in time is 2 p.m., and check-out time is 1 p.m.

(10)[~~(9)~~](a) There shall be a fourteen (14) day maximum stay unless granted a waiver by the park manager for good cause due to an emergency or business necessity.

(b) A camper may be asked to move to facilitate maintenance on the site.

(c) Campers shall not homestead.

(11)[~~(10)~~](a) A camper shall register at the entrance gate or designated area and shall receive a campsite assignment from the gate attendant, which shall be noted with a camping permit.

(b) A camper shall not change a campsite assignment, unless permission to move is granted by the gate attendant.

(c) If campers are permitted to select a site of their choice, they shall return immediately to the gate attendant and identify the chosen site.

(12)[~~(11)~~] Central service buildings and other facilities in the camping area shall be for campers and their guests only. Anyone other than registered campers or guests of registered campers shall not picnic, sightsee, or have reunions in the campground.

(13)[~~(12)~~] Fires shall be restricted to fire rings in designated areas only and shall be attended at all times.

(14)[~~(13)~~](a) Vehicles shall be parked in campsite spaces and parking lots and shall display a "car pass" or "visitor pass."

(b) No more than two (2) vehicles are permitted per campsite, including recreational vehicles (RV), except as permitted under subsection (16)(b) of this section.

(c) Vehicles shall not block adjacent sites or roadways.

(15)[~~(14)~~] Tables shall not be moved from site to site.

(16)[~~(15)~~](a) Two (2) groups or parties may share one (1) campsite.

(b) If two (2) groups or parties agree to share one (1) campsite, each shall be issued a camping permit, if two (2) tents, campers, or recreational vehicles are used.

(17)[~~(16)~~](a) Campers shall keep their sites clean and dispense of refuse in the receptacles provided.

(b) Campers may camp on grass only with prior permission of the gate attendant or park manager.

(18)[~~(17)~~] Alcoholic beverages shall not be publicly displayed.

(19)[~~(18)~~] Fireworks shall not be allowed at the campground.

(20)[~~(19)~~]Campers shall:

(a) Report loss, theft, accident, or disturbance to gate at-

tendant; and

(b) Turn in all found property to gate attendant.

(21)[~~(20)~~](a) A camper shall not deface or damage park property.

(b) Failure to comply with paragraph (a) of this subsection may result in arrest, fine, or eviction from the park property.

(22)[~~(21)~~] All visitors shall sign in and out, display a visitor pass, and obey all campground rules.

(23)[~~(22)~~] More than two (2) visitor passes shall not be issued per site.

(24)[~~(23)~~](a) A camper or a camper's guest shall not engage in fighting; threatening or abusive language; lewd acts, or conduct that causes public inconvenience, annoyance, alarm, unreasonable noise, or is disturbing to campground patrons.

(b) Failure to comply with paragraph (a) of this subsection may result in arrest, fine, or eviction from the park property.

Section 2. Sanctions. Any person identified by the park manager as being in violation of this administrative regulation may:

(a) Have his or her permit(s) revoked;

(b) Have his or her four (4) wheeler, all terrain vehicle, utility type vehicle, moped, golf cart, horse trailer, or any similar vehicle towed to the nearest licensed towing facility; and

(c) Be removed from the park premises.[~~The park manager reserves the right to remove any camper or camper's guest from the premises for violation of this administrative regulation.~~]

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: May 15, 2012

FILED WITH LRC: May 15, 2012 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD A public hearing on this administrative regulation shall be held on Tuesday, June 26, 2012 at 3:00 p.m. at the Tourism, Arts and Heritage Cabinet, 500 Mero Street, Capital Plaza Tower, 24th Floor, 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 to 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 by close of business on July 2, 2012. 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: Leigh Powers, Legal Counsel, Tourism, Arts and Heritage Cabinet, 500 Mero Street, 24th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4270.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person(s): B. Leigh Powers, Mona Juett

(1) Provide a brief summary of:

(a) What this administrative regulation does: Amends 304 KAR 1:040 to allow golf carts on state park campgrounds with the appropriate permit; allows the park manager to designate areas in which four (4) wheelers, all terrain vehicles, utility type vehicles or similar vehicles are prohibited; prohibits more than two (2) vehicles per campsite; and establishes penalties for violations of this regulation.

(b) The necessity of this administrative regulation: Pursuant to KRS 148.021(8), the Commissioner may promulgate administrative regulations in accordance with provisions of KRS Chapter 13A in order to carry out the provisions of said statute. The Department of Parks requires that the use of golf carts, four (4) wheelers, all terrain vehicles, utility type vehicles or similar vehicles be regulated on park property in order to conserve and protect the natural beauty of the parks, as well as efficiently manage state property.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 148.021 authorizes the Commissioner of the Department of Parks to promulgate administrative regulations reasonably necessary to implement or carry out the purposes of KRS Chapter 148.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes guidelines for use of golf carts, four (4) wheelers, all terrain vehicles, utility type vehicles or similar vehicles on park property.

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

(a) How the amendment will change this existing administrative regulation: Amends 304 KAR 1:040 to allow golf carts on state park campgrounds with the appropriate permit; allows the park manager to designate areas in which four (4) wheelers, all terrain vehicles, utility type vehicles or similar vehicles are prohibited; prohibits more than two (2) vehicles per campsite; and establishes penalties for violations of this regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary for the conservation and efficient management of our state parks.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 148.021 authorizes the Commissioner of the Department of Parks to promulgate administrative regulations reasonably necessary to implement or carry out the purposes of KRS Chapter 148.

(d) How the amendment will assist in the effective administration of the statutes: This amendment allows golf carts on state park campgrounds with the appropriate permit; allows the park manager to designate areas in which four (4) wheelers, all terrain vehicles, utility type vehicles or similar vehicles are prohibited; prohibits more than two (2) vehicles per campsite; and establishes penalties for violations of this regulation. Said allowances and restrictions aid in the efficient management of the administrative functions of the state relating to the operation of state parks, pursuant to KRS 148.021.

(3) List the type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: The Department of Parks, golfers, and four (4) wheeler enthusiasts will be affected by this administrative regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either implementation of this administrative regulation, if new, or by the change, if it is an amendment: Guests visiting Kentucky State Parks will become more aware of the delicate nature of the parks; those wishing to drive golf carts will have the ability to use them on park property, through a permitting process; especially delicate areas of parks can be protected from damage by restrictions on four wheelers, all terrain vehicles and similar vehicles.

(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: It will cost nothing to implement this administrative regulation. Permitting of vehicles and maintenance of the park property are already included in park employee duties.

(a) Initially: No expenses or an unknown amount will be incurred.

(b) On a continuing basis: No expenses or an unknown amount will be incurred.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding are 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 establishes a permit fee for golf carts on state park property. A one week permit may be obtained for twenty-five dollars ($25) and an annual permit may be obtained for one hundred dollars ($100).

(9) TIERING: Is tiering applied? Tiering was not applied to this administrative regulation. All individuals who visit Kentucky State Parks will encounter the promotion program equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Parks 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 148.021 authorizes the Commissioner of the Department of Parks to promulgate administrative regulations reasonably necessary to implement or carry out the purposes of KRS Chapter 148.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect: Expenditures for the Kentucky Department of Parks may change but will be minimal or nonexistent. Revenues of the state will increase as permit fees are obtained from golf cart users.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Revenues may increase but the specific amount of revenue is not known.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Again, Revenues will increase as golf carts are permitted on state park property, but the specific amount of revenue is not known.

(c) How much will it cost to administer this program for the first year? The program will not incur any costs as administrative tasks are already part of park employee duties.

(d) How much will it cost to administer this program for subsequent years? Unknown, depending on the scope of the project in future years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Permits
(Amendment)

405 KAR 10:030. General Requirements for[~~Types, terms and conditions of performance bonds and~~] liability insurance.

RELATES TO: KRS 350.020, 350.060, 350.064, 350.100, 350.110, 350.465

STATUTORY AUTHORITY: KRS [~~Chapter 13A,~~] 350.020, 350.028, 350.060, 350.064, 350.151, 350.465

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 in pertinent part requires the cabinet to specify types, terms, and conditions for[~~performance bonds and~~] liability insurance.[~~This administrative regulation sets forth the various types and conditions which the cabinet will accept in satisfaction of the bonding requirements. This administrative regulation sets forth that bonds shall be payable to the cabinet and other conditions. This administrative regulation specifies certain alternative types of bonds, in addition to the surety bond, and the conditions upon which the cabinet will accept them.~~] This administrative regulation specifies the terms and conditions of liability insurance.

Section 1. Requirement to File a Certificate of Liability Insurance. Each applicant for a permit shall submit to the cabinet, as part of the permit application, a certificate issued by an insurance company authorized to do business in Kentucky. The amount, duration, form, conditions and terms of this insurance shall conform to Section 2 of this administrative regulation.[~~Types of Performance Bond. (1) The cabinet shall approve performance bonds of only those types which are set forth in this section.~~

~~(2) The performance bond shall be either:~~

~~(a) A surety bond;~~

~~(b) A collateral bond;~~

~~(c) A combination of the above bonding types; or~~

~~(d) Bonds filed pursuant to the provisions of the Kentucky Bond Pool Program (405 KAR 10:200, KRS 350.595, and 350.700 through 350.755).~~

~~Section 2. Terms and Conditions of Performance Bond. (1) The performance bond shall be in an amount determined by the cabinet as provided in 405 KAR 10:020, Sections 1 and 2.~~

~~(2) The performance bond shall be payable to the cabinet.~~

~~(3) The performance bond shall be conditioned upon faithful performance of all of the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24 and the conditions of the permit and shall cover the entire permit area or such incremental area as the cabinet has approved pursuant to 405 KAR 10:010, Section 3(2).~~

~~(4) The duration of the bond shall be for a time period provided in 405 KAR 10:020, Section 3.~~

~~(5) Surety bonds shall be subject to the following conditions:~~

~~(a) The cabinet shall not accept the bond of a surety company unless the bond shall not be cancelable by the surety at any time for any reason including, but not limited to, nonpayment of premium or bankruptcy of the permittee during the period of liability. Surety bond coverage for permitted lands not disturbed may be cancelled with the written approval of the cabinet, provided the surety gives written notice to both the permittee and the cabinet of the intent to cancel prior to the proposed cancellation. Such notice shall be by certified mail. Cancellation shall not be effective for lands subject to bond coverage which are affected after receipt of notice, but prior to approval by the cabinet. The cabinet may approve such cancellation only if a replacement bond has been filed by the permittee, or if the permit area has been reduced by revision to the extent that the remaining bond amount, after cancellation, is sufficient to cover all the costs attributable to the completion of reclamation operations on the reduced permit area in accordance with 405 KAR 10:020. The cabinet shall advise the surety, within thirty (30) days after receipt of a notice to cancel bond, whether the bond may be cancelled on an undisturbed area.~~

~~(b) The bond shall provide that the surety and the permittee shall be jointly and severally liable.~~

~~(c)1. The surety shall give prompt notice to the permittee and the cabinet of any notice received or action filed alleging the insolvency or bankruptcy of the surety, or alleging any violations of regulatory requirements which could result in suspension or revocation of the surety's license to do business.~~

~~2. In the event the surety becomes unable to fulfill its obligations under the bond for any reason, the surety shall promptly provide written notice to the permittee and the cabinet.~~

~~3. Upon the incapacity of a surety by reason of bankruptcy, insolvency, or suspension or revocation of its license or certificate of authority, the permittee shall be deemed to be without proper bond coverage and shall promptly notify the cabinet. However, nothing herein shall relieve the permittee of responsibility under the permit or the surety of liability on its bond. The cabinet shall issue a notice to the permittee specifying a reasonable period to replace bond coverage, not to exceed ninety (90) days. If an adequate bond is not posted by the end of the period allowed, the permittee shall cease coal extraction and coal processing operations and shall comply with the provisions of 405 KAR 16:010, Section 6 or 405 KAR 18:010, Section 4 and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan.~~

~~Coal extraction and coal processing operations shall not resume until the cabinet has determined that an acceptable bond has been posted. If an acceptable bond has not been posted by the end of the period allowed, the cabinet may suspend the permit until acceptable bond is posted.~~

~~(d) A surety bond shall be executed by the operator and a corporate surety licensed to do business in the Commonwealth of Kentucky.~~

~~(6) Collateral bonds may include cash deposits with the cabinet, certificates of deposit, and letters of credit. Collateral bonds, except for letters of credit, shall be subject to the following conditions:~~

~~(a) The cabinet or its authorized agent shall obtain possession of and keep in custody all collateral deposited by the applicant, until authorized for release or replacement as provided in this chapter.~~

~~(b) The cabinet shall require that certificates of deposit be assigned to the cabinet or its authorized agent in writing, and the assignment evidenced on the books of the bank issuing such certificates.~~

~~(c) The cabinet shall not accept an individual certificate of deposit unless it is issued by a FDIC or FSLIC insured financial institution, and in no event shall the cabinet accept a denomination in excess of the maximum insurable amount as determined by FDIC and FSLIC.~~

~~(d) The cabinet shall require the issuer of certificates of deposit to waive all rights of setoff or liens which it has or might have against those certificates.~~

~~(e) Persons with an interest in collateral posted as a bond, and who desire notification of actions pursuant to the bond, shall request the notification in writing to the cabinet at the time the collateral is offered.~~

~~(f) The cabinet shall require the applicant to deposit sufficient amounts of certificates of deposit, so as to assure that the cabinet will be able to liquidate those certificates prior to maturity, upon forfeiture, for the amount of the bond required by this chapter.~~

~~(7) Letters of credit shall be subject to the following conditions:~~

~~(a) The letter may only be issued by a bank organized or authorized to do business in the United States. Any letter of credit issued by a non-Kentucky lending institution must be confirmed by an approved Kentucky lending institution.~~

~~(b) Letters of credit shall be irrevocable.~~

~~(c) The letter must be payable to the cabinet upon demand and receipt from the cabinet of a notice of forfeiture issued in accordance with 405 KAR 10:050, or in the event the bank wishes to terminate the letter on its expiration date, the cabinet may draw upon demand.~~

~~(d)1. The issuer shall give prompt notice to the permittee and the cabinet of any notice received or action filed alleging the insolvency or bankruptcy of the issuer, or alleging any violations of regulatory requirements which could result in suspension or revocation of the issuer's charter or license to do business;~~

~~2. In the event the issuer becomes unable to fulfill its obligations under the letter of credit for any reason, notice shall be given immediately to the permittee and the cabinet;~~

~~3. Upon the incapacity of an issuer by reason of bankruptcy, insolvency or suspension or revocation of its charter or license, the permittee shall be deemed to be without proper performance bond coverage and shall promptly notify the cabinet. However, nothing herein shall relieve the permittee of responsibility under the permit or the issuer of liability on the letter of credit. The cabinet shall issue a notice to the permittee specifying a reasonable period to replace bond coverage, not to exceed ninety (90) days. If an adequate bond is not posted by the end of the period allowed, the permittee shall cease coal extraction and coal processing operations and shall comply with the provisions of 405 KAR 16:010, Section 6 or 405 KAR 18:010, Section 4 and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan. Coal extraction and coal processing operations shall not resume until the cabinet has determined that an acceptable bond has been posted. If an acceptable bond has not been posted by the end of the period allowed, the cabinet may suspend the permit until acceptable bond is posted.~~

~~(8) When a permittee chooses to combine two (2) or more bonds for one (1) permit area or increment, the bonds may be accompanied by a schedule, acceptable to the cabinet and agreed to be all parties, which sets forth the agreed distribution of bond amounts to be released or reduced under 405 KAR 10:040 and 405 KAR 10:020, Section 4, respectively. If no schedule is submitted, the cabinet may release equal percentages of each bond.~~

~~Section 3. Substitution of Bonds. (1) The cabinet may allow permittees to substitute existing surety or collateral bonds for equivalent surety or collateral bonds, if the liability which has accrued against the permittee on the permit area or increment is transferred to such substitute bonds.~~

~~(2) The cabinet shall not release existing performance bonds until the permittee has submitted and the cabinet has approved acceptable substitute performance bonds. A substitution of performance bonds pursuant to this section shall not constitute a release of bond under 405 KAR 10:040.~~

~~(3) The cabinet may refuse to allow substitution of bonds if an action for revocation or suspension of the permit covered by the bond is pending or if there is a pending action for forfeiture of the bond.~~]

Section 2.[~~4.~~] Terms and Conditions for Liability Insurance. (1) The applicant shall submit, as a part of the permit application at the time of bond submission, a certificate issued by an insurance company authorized to do business in Kentucky certifying that the applicant has a public liability insurance policy in force for the surface coal mining and reclamation operation for which the permit is sought. The certification shall be on Certificate of Liability Insurance, Form SME-29, October 2008[~~a form prescribed by the cabinet~~]. The policy shall provide for personal injury and property damage protection in an amount adequate to compensate for all personal injury and property damage resulting from surface coal mining and reclamation operations, including damage caused by the use of explosives and damage to water wells. Minimum insurance coverage for bodily injury and property damage shall be $300,000 for each occurrence and $500,000 aggregate.

(2) The policy shall be maintained in full force during the term of the permit or any renewal thereof, and during the liability period necessary to complete all reclamation operations under 405 KAR Chapters 7 through 24, until full bond release has been granted.

(3) The policy shall include a clause requiring that the insurer notify the cabinet whenever substantive changes are made in the policy, including any termination or failure to renew. This notice shall be made on the Notice of Cancellation, Nonrenewal or Change of Liability Insurance, Form SME-30, June 2005.

(4) In the event the insurer becomes unable to fulfill its obligations under the policy, notice shall be given immediately to the permittee and the cabinet.

(5) Upon the incapacity of an insurer by reason of bankruptcy, insolvency, or suspension or revocation of its license or certificate of authority, the permittee shall be deemed to be without insurance coverage and shall promptly notify the cabinet. However, nothing herein shall relieve the insurer of liability on its policy. The cabinet shall issue a notice to the permittee specifying a reasonable period to replace such coverage, not to exceed ninety (90) days. If an adequate insurance coverage is not posted by the end of the period allowed, the permittee shall cease coal extraction and coal processing operations and shall comply with the provisions of 405 KAR 16:010, Section 6, or 405 KAR 18:010, Section 4, and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan. Coal extraction and coal processing operations shall not resume until the cabinet has determined that an acceptable insurance coverage has been posted. If an acceptable insurance coverage has not been posted by the end of the period allowed, the cabinet may suspend the permit until acceptable insurance coverage is posted.

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

(a) "Certificate of Liability Insurance, Form SME-29", October 2008; and

(b) "Notice of Cancellation, Nonrenewal or Change of Liability Insurance, Form SME-30", June 2005.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Natural Resources, 2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: May 4, 2012

FILED WITH LRC: May 4, 2012 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 21, 2012 at 10:00 A.M. (Eastern Time) at Conference Room D-16 of the Department for Natural Resources at #2 Hudson Hollow, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing June 14, 2012, 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 July 2, 2012. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, #2 Hudson Hollow, Frankfort, Kentucky 40601, phone (502) 564-6940, fax (502) 564-5698, email Michael.Mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation specifies the terms and conditions of liability insurance.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to give regulated entities the necessary information on liability insurance.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 350 requires the cabinet to specify types, terms, and conditions for liability insurance. This administrative regulation provides information on liability insurance to regulated entities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by providing necessary information regarding liability insurance.

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

(a) How the amendment will change this existing administrative regulation: This amendment removes the information related to bonding and places that information in the new regulation 405 KAR 10:015.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to place all the information related to bonding in one administrative regulation. This will make this information easier to find for regulated entities.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment removes the information related to bonding and places in the new administrative regulation which will contain all the bonding information for surface mining activities.

(d) How the amendment will assist in the effective administration of the statutes: Removal of information related to bonding will leave only information related to liability insurance. This separation will make the information easier for regulated entities to understand and to maintain compliance.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact all surface coal mine permit holders. There are approximately 870 currently bonded.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will not place new requirements on regulated entities. The information is simply being relocated into a different administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will not be an additional cost to the regulated entity associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All the information related to liability insurance will be located in one place. Therefore the information will be easier to locate for regulated entities.

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

(a) Initially: This amendment will not cost the agency additional funds to implement.

(b) On a continuing basis: This amendment will not cost the agency additional funds to implement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General fund and federal fund dollars will be used to fund this 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: There will not be a need to increase fees or funding to administer the amendments to this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation will not increase nor does it establish any fees.

(9) TIERING: Is tiering applied? No. All entities are required to have liability insurance as part of their permit application.

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 of Mine Permits and Division of Mine Reclamation and Enforcement.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.020, 350.028, 350.060, 350.064, 350.151, 350.465

4. Estimate the effect of this administrative regulation on the expenditures and revenues 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 amendment will not generate funds for use by the cabinet.

(b) How 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 new administrative regulation will not generate funds for use by the cabinet on a continuing basis.

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

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

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: NA

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. Part 730

2. State Compliance Standards. KRS 350.064 and 405 KAR 10:030.

3. Minimum or uniform standards contained in the federal mandate. 30 C.F.R. 800.60

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Permits
(Amendment)

405 KAR 16:020. Contemporaneous reclamation.

RELATES TO: KRS 350.062, 350.093, 350.100, 350.110, 350.405, 350.410, 350.435, 350.450, 350.465, 30 C.F.R. Parts 730-733, 735, 816.100, 917, 30 U.S.C. 1253, 1255

STATUTORY AUTHORITY: KRS[~~Chapter 13A,~~] 350.028, 350.093, 350.100, 350.465, 30 C.F.R. Parts 730-733, 735, 816.100, 917, 30 U.S.C. 1253, 1255

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and administrative regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during surface mining activities and for restoration and reclamation of surface areas affected by mining activities. This administrative regulation sets forth requirements for keeping reclamation operations, including backfilling, grading, soil preparation and revegetation, contemporaneous with mining operations.

Section 1. Definition. (1) "Completed reclamation" means completion of reclamation phase I as defined by 405 KAR 10:040, Section 2(4)(a).

Section 2. General. Reclamation operations, including but not limited to, backfilling, grading, topsoil redistribution, liming, fertilizing, other soil preparation, seeding, planting, mulching and revegetation of all land that is disturbed by surface mining activities, shall occur as contemporaneously as practicable with mining operations and in accordance with this administrative regulation.

Section 3.[~~2.~~] Backfilling and Grading. Backfilling and grading operations shall proceed as concurrently with mining operations as possible and in accordance with the requirements of this section, except that specific time and distance criteria set forth in the approved plan for backfilling and grading shall take precedence over corresponding criteria in this administrative regulation. The approved backfilling and grading plan may specify time and distance criteria less restrictive than those set forth in this administrative regulation, and may allow more than one (1) pit per permit area, if the permittee has demonstrated through detailed written analysis in the permit application that other criteria or additional pits are essential to the proposed mining and reclamation operations, and the cabinet has determined that use of the requested criteria or additional pits will not likely cause adverse environmental impacts. If alternative distance limits are approved or additional pits allowed, then the applicant shall provide supplemental assurance in accordance with 405 KAR 10:015, Section 11[~~Section 6 of this administrative regulation~~].

(1) Area mining. Backfilling and grading to approximate original contour on a disturbed area shall be completed within 180 calendar days following the removal of coal from that area, and shall not be more than four (4) spoil ridges behind the pit being mined, with the spoil from the pit being mined being considered the first spoil ridge. There shall be only one (1) pit allowed per permit area.

(2) Auger mining. Coal removal in a given location shall be completed within sixty (60) calendar days after the initial excavation for the purpose of removal of topsoil or overburden at that location. Auger holes shall be sealed as required by 405 KAR 20:030. Backfilling and grading to approximate original contour shall follow coal removal by not more than sixty (60) days and by not more than 1,500 linear feet. There shall be only one (1) auger mining operation allowed per permit area.

(3) Contour mining. Coal removal in a given location shall be completed within sixty (60) calendar days after the initial excavation for the purpose of removal of topsoil or overburden at that location. Backfilling and grading to approximate original contour shall follow coal removal by not more than sixty (60) calendar days and by not more than 1,500 linear feet. There shall be only one (1) pit allowed per permit area.

(4) Multiple-seam contour mining. If overlapping multiple cuts producing a benched highwall are made to remove more than one (1) coal seam at a given location, backfilling and grading at that location shall be completed within sixty (60) calendar days after removal of the last coal seam at that location and shall follow the advancing cut of the last coal seam by not more than 1,500 feet. Removal of all coal seams shall proceed as concurrently as possible and in a timely manner, in order to minimize the time period in which disturbed areas are exposed prior to reclamation. There shall be only one (1) multiple seam operation allowed per permit area.

(5) Combined contour mining and auger mining. Coal removal by contour mining at a given location shall be completed within the time frame specified in subsection (3) or (4) of this section as appropriate. Auger mining at a given location shall be completed within thirty (30) calendar days after coal removal by contour mining at that location. Sealing of auger holes and backfilling and grading shall then be completed as required in subsection (2) of this section. There shall be only one (1) contour mining pit and one (1) auger mining operation allowed per permit area.

(6) Mountaintop removal. Backfilling and grading on a disturbed area shall be completed within 180 calendar days following the removal of coal from that area. If the mountaintop removal operation begins by mining a contour cut around all or a part of the mountaintop, the time and distance limits for contour mining shall apply to that cut unless alternative limits are approved under Section 3[~~Sections 2 and 6~~] of this administrative regulation and 405 KAR 10:015, Section 11.

(7) All final backfilling and grading shall be completed before equipment necessary for backfilling and grading is removed from the site.

Section 4.[~~3.~~] Soil Preparation and Revegetation. (1) When backfilling and grading have been completed on an area, the required topsoil redistribution, liming, fertilizing, other soil preparation, seeding, planting, and mulching of that area shall be completed as soon as possible in a manner consistent with the approved plans for topsoil handling and revegetation and in accordance with 405 KAR 16:200, Section 3.

(2) The time allowed for soil preparation and revegetation pursuant to subsection (1) may exceed thirty (30) calendar days only when specifically authorized in the approved plans for topsoil handling and revegetation or when authorized pursuant to Section 5 or 6[~~Sections 4 or 5~~] of this administrative regulation.

Section 5.[~~4.~~] Deferments. (1) The cabinet may allow a permittee to defer the time criteria for coal removal and contemporaneous reclamation requirements on specified areas if the permittee can demonstrate that the deferment is necessary to address at least one (1) of the following:

(a) Adverse condition including weather, labor, and other conditions clearly beyond the permittee's control.

(b) Combined surface and underground mining activities subject to the provisions of 405 KAR 8:050, Section 7, and 405 KAR 20:020.

(c) Coal marketing problems.

(2) Application for a deferment pursuant to this section shall be

in the form prescribed by the cabinet. Approval of the deferment request shall be made in writing. The approval shall state that the deferment is justified and that no environmental damage will occur during the period of deferment.

(a) Application for a deferment pursuant to subsection (1)(a) of this section for adverse conditions shall be made in writing and shall include documentation of the adverse conditions beyond the operator's control and demonstration of impossibility of conducting coal removal and contemporaneous reclamation in a timely manner due to those conditions. The application shall be filed at the appropriate regional office of the department. Upon a successful demonstration that the adverse conditions exist, the regional administrator may grant a reclamation deferment for a maximum of thirty (30) days, on a form provided by the department. At least seven (7) days prior to the expiration of the deferment, the permittee may request, in writing, an additional extension, again stating the reason for the request and providing any appropriate additional documentation. The regional administrator may renew the original extension once upon request, however the renewal shall not exceed thirty (30) days. Any need for additional time shall be demonstrated to the Division of Mine Reclamation and Enforcement[~~Field Services~~] in Frankfort by written request. The request shall initially be submitted to the regional office at least two (2) weeks prior to the expiration of the renewed deferment. Upon recommendation of the regional administrator, the director of the Division of Mine Reclamation and Enforcement[~~Field Services~~] shall issue his decision on or before expiration of the deferment.

(b) Application for a deferment pursuant to subsection (1)(b) of this section for combined surface and underground mining shall be made according to 405 KAR 8:050, Section 7.

(c) Application for a deferment pursuant to subsection (1)(a) of this section for coal marketing problems shall be made according to Section 6[~~5~~] of this administrative regulation.

(3) The applicant has the burden of establishing the need for a deferment. The applicant shall demonstrate that reclamation on the site is contemporaneous as of the date of the request for deferment and that distance requirements for contemporaneous reclamation will be met during the period of deferment. The permittee shall continue to comply with the time limits of the coal removal and contemporaneous reclamation requirements until the deferment is issued.

(4) Reclamation deferments may be approved for a period reasonably related to the specified conditions justifying the deferment. The deferral shall not extend beyond the expiration date of the permit and in no event shall the aggregate deferral period exceed thirty (30) months, except where approved combined mining is being carried out under subsection (1)(b) of this section.

(5) The cabinet shall periodically reexamine and update the amount of the bond on the permit area so that the amount of the bond is sufficient to assure completion of reclamation if the work had to be performed by the cabinet in the event of forfeiture.

Section 6.[~~5.~~] Additional Requirements for Deferments for Coal Marketing Problems. Upon written application conforming to the requirements of the statutes and administrative regulations, the cabinet may grant a deferment of coal removal and contemporaneous reclamation for a period not to exceed thirty (30) months pursuant to KRS 350.093. (1) Application requirements.

(a) An applicant for a deferment of coal removal and contemporaneous reclamation shall submit an application on a form specified by the cabinet. An application shall contain at least the following:

1. A demonstration of the need for the deferment, including documentation of the coal marketing problem.

2. A plan consisting of a detailed narrative description of the method by which the applicant shall conform to each of the performance standards specified in subsection (2) of this section.

3. A detailed schedule for implementation of each of the performance standards of subsection (2) of this section, which may not extend beyond thirty (30) days from the issuance by the cabinet of a deferment from coal removal and contemporaneous reclamation.

4. An itemized estimate of the total cost of reclamation of the area proposed for deferment. The estimate shall, at a minimum, include calculations and supporting data demonstrating the volume of spoil necessary for backfilling and grading all open pits and highwalls, the cost of backfilling those pits and highwalls, the cost of final grading and revegetation of the entire disturbed area, and the cost of moving necessary reclamation equipment to the job site.

5. Written consent of the surety for the deferment if the permit area or increment is covered by a surety bond.

(b) The applicant shall place an advertisement in the newspaper of largest bona fide circulation in each county in which the permit is located. The advertisement shall be published within ten (10) days after the date the application is submitted to the cabinet and shall contain, at a minimum, the location of the area for which coal removal and contemporaneous reclamation are proposed to be deferred, the reason for which the deferment is sought, and the duration of the requested deferment. The advertisement shall also indicate that the deferment shall not exceed six (6) months initially, but may be renewed for additional six (6) months periods up to a maximum of thirty (30) months. The applicant shall submit proof of the advertisement to the cabinet within fifteen (15) days after application for the deferment. The application shall not be deemed complete until the proof is submitted.

(c) The applicant shall also notify, in writing, the owners of the surface of the permit area and adjacent areas as listed on the permit application. The applicant shall provide proof of this notice to the cabinet. The application shall not be deemed complete until the proof is submitted. Within five (5) days after receipt of a complete application, the cabinet shall notify those other persons, if any, who it determines to have an interest which is or may be adversely affected by the proposed deferment.

(d) Any person with an interest which is or may be adversely affected may file written comments and objections to the application for a deferment within ten (10) days after receipt of the written notice or publication of the newspaper notice, whichever is later.

(e) Upon receipt of the application, the cabinet shall examine the data and calculations submitted pursuant to subsection (1)(a)4 of this section and shall cause an inspection of the area subject to the proposed deferment to be made by an authorized agent of the cabinet. Based upon the data supplied and the inspection, the Division of Permits of the cabinet shall determine whether the existing bond for the entire permit or increment is sufficient for the cabinet to completely reclaim the entire disturbed area of the permit or increment at the expiration of the deferment. If the existing bond is insufficient, then the cabinet shall require, prior to approving the deferment, that the applicant file such additional bond as is determined by the cabinet to be sufficient for the cabinet to completely reclaim the disturbed area.

(f) The cabinet shall consider the application, any other submittals from the applicant and any comments received from the public, and shall render a final decision on the application within thirty (30) days of receipt of the complete application. If the cabinet determines that the applicant has satisfied the requirements for a deferment from coal removal and contemporaneous reclamation contained in KRS 350.093(2) and in this administrative regulation, then the cabinet shall grant a deferment to the applicant for a period not to exceed six (6) months. Upon approval by the cabinet, the plan and schedule proposed by the applicant and any conditions imposed on the approval by the cabinet shall become conditions of the permit.

(2) Performance standards. Each permittee subject to a deferment shall, at a minimum:

(a) Complete final reclamation including backfilling, grading, topsoiling and revegetation on all disturbed areas; except that those areas of the pit, work area, excess spoil disposal areas, topsoil storage areas, and access road necessary to allow resumption of coal extraction without redisturbance of finally reclaimed areas may be exempted from this requirement for the duration of the deferment. In order to meet this requirement, the permittee may be required to reclaim closer to the pit than the distance limits specified in the contemporaneous reclamation administrative regulation.

(b) Mulch or establish quick growing temporary vegetation, or both, on all areas exempted under paragraph (a) of this subsection (except for haul road surfaces) such as excess spoil disposal are-

as, work areas, topsoil storage areas, and all other areas which have been cleared of vegetation, to the extent technically practicable to achieve erosion control or stability as determined by the cabinet. The permittee shall maintain the cover on all these areas to minimize erosion throughout the deferment period.

(c) Acid- or toxic-producing spoil shall not be left exposed but shall be covered or treated in accordance with Section 3 of 405 KAR 16:190 and 405 KAR 18:190.

(d) Supplemental sediment control measures such as straw dikes and fabric filter fences may be required by the cabinet on a case-by-case basis to minimize additional contributions of sediment to the stream flow or run-off.

(e) Where accumulation of water in the pit may adversely impact the hydrologic balance, public health and safety or the environment, the cabinet shall require such measures as are necessary to minimize adverse impacts. These may include but are not limited to such measures as:

1. Providing drainage from the pit to prevent breaching of the undisturbed berm.

2. Pumping the water to a treatment facility when accumulation of acid or toxic water in the pit may result in contamination of the ground water.

(3) Deferment implementation.

(a) The permittee shall implement the terms of the approved plan within the time schedule approved by the cabinet and consistent with this administrative regulation.

(b) Except as expressly modified by the approved plan, schedule, and conditions in the deferment approval, the permittee shall comply with all of the requirements of the administrative regulations and the permit conditions which would apply to the operation had the deferment not been granted. These requirements include but are not limited to the following:

1. All discharges of water from the permitted area shall be continually treated to meet the applicable effluent limitations.

2. All water quality monitoring and reporting otherwise required shall continue.

3. All diversion ditches, sedimentation ponds, haul road drainage ditches and culverts, etc., shall be rehabilitated as necessary and continually maintained to comply with the applicable performance standards and with the designs approved in the permit. Sediment shall be removed from the sedimentation ponds when the design sediment storage volume has filled with sediment.

4. Haul road maintenance, such as grading, replacement of durable surface material, and cleaning out of ditches and culverts, shall be continually performed as necessary to comply with the performance standards and the approved permit and to minimize erosion.

(4) Expiration and renewal.

(a) A deferment from coal removal and contemporaneous reclamation shall expire six (6) months after the date of issuance of the deferment by the cabinet. A deferment from coal removal and contemporaneous reclamation may be renewed upon written application for a period of no more than six (6) months upon a showing of need for additional time, and upon a showing that the area subject to deferment is in compliance with the requirements of the administrative regulations, the permit, and the terms of the deferment. The cabinet shall inspect the area subject to deferment prior to approval of any renewal.

(b) Regardless of the reasons for the deferment, no deferments or subsequent renewals shall be granted beyond the maximum aggregate period of thirty (30) months for any permit area, including any deferment periods issued for adverse conditions. At the expiration of the thirty (30) month aggregate period, a permittee shall not be granted any additional deferments or renewals unless the permittee can demonstrate that it has conducted twelve (12) months of continuous active coal removal from the permit area after the expiration of the thirty (30) month aggregate period, it has completed reclamation of all previously deferred areas in the permit area, and it otherwise meets all requirements for a deferment.[~~For the purpose of this paragraph, "completed reclamation" means completion of reclamation phase I as defined by 405 KAR 10:040, Section 2(4)(a).~~]

(c) The deferment shall terminate upon resumption of coal extraction activities on the permit area subject to deferment.

(5) Enforcement and revocation.

(a) The cabinet shall inspect the area subject to deferment at least once each month on the average, during the routine partial and complete inspections made of the permit area. Upon each inspection, the inspector shall note under the "comments" section of the Mine Inspection Report form whether the area subject to deferment meets the conditions of the deferment approval, including the plan and schedule.

(b) If the inspection shows that a violation of the conditions of the deferment or of the administrative regulations or of the conditions of the permit is occurring on the area subject to deferment, or is causally related to the area subject to deferment, then the cabinet shall issue a notice of noncompliance and order for remedial measures or order for cessation and immediate compliance in accordance with 405 KAR Chapter 12. If the permittee fails to abate the violation within the time for abatement, or any extension thereof, established by the cabinet, then the cabinet shall revoke the deferment in addition to other enforcement actions required by 405 KAR Chapters 7 through 24.[~~Section 6. Supplemental Assurance. (1) If alternative distance limits or additional pits are approved under Section 2 of this administrative regulation, the applicant shall submit to the cabinet supplemental assurance in the amount set forth in this section. This supplemental assurance shall be for the purpose of assuring the reclamation of the additional unreclaimed disturbed area and shall be in addition to the performance bond required under 405 KAR Chapter 10.~~

~~(a) The supplemental assurance shall not be subject to the bond release requirements of 405 KAR 10:040, but shall be returned in accordance with the requirements of this section.~~

~~(b) However, the requirements of 405 KAR 10:030, 405 KAR 10:035, and 405 KAR 10:050 shall apply to supplemental assurance.~~

~~(2) Contour mining (single seam). The amount required shall be $50,000 per 1500 feet, or any portion thereof, of additional distance approved for the first pit under Section 2 of this administrative regulation. If an additional pit or pits are approved, the amount shall be $50,000 per 1500 feet, or any portion thereof, including the first 1500 feet of each additional pit.~~

~~(3) Contour mining (multiple seam). For multiple seam contour mining operations subject to Section 2(4) of this administrative regulation, the amount required shall be $50,000 per 1500 feet, or any portion thereof, of additional distance approved for the first multiple seam operation under Section 2 of this administrative regulation. If any additional multiple seam operations are approved, the amount shall be $50,000 per 1500 feet, or any portion thereof, including the first 1500 feet of each additional multiple seam operation.~~

~~(4) Mountaintop removal. If a mountaintop removal operation begins by mining a contour cut around all or a portion of the mountaintop, that contour portion shall require the same supplemental assurance set forth in subsection (2) of this section.~~

~~(5) Area mining. The amount required shall be $50,000 for any four (4) spoil ridges, or any portion thereof, of additional distance approved for the first pit under Section 2 of this administrative regulation. If an additional pit or pits are approved, the amount shall be $50,000 for any four (4) spoil ridges, or any portion thereof, including the first four (4) spoil ridges of each additional pit.~~

~~(6) Return of supplemental assurance. Supplemental assurance shall be returned to the person that submitted it upon:~~

~~(a) Application to the cabinet for the return; and~~

~~(b) Inspection and written documentation (including photographs) by the cabinet verifying that the area for which the supplemental assurance was submitted has been backfilled and graded (or in the case of mountaintop removal, the associated highwall has been eliminated by mining operations).~~

~~(7) The provisions of this section and the requirements of Section 2 of this administrative regulation requiring approval for more than one (1) pit per permit area shall apply:~~

~~(a) Upon the effective date of this administrative regulation for all permit applications submitted on or after that date; and~~

~~(b) 180 days after the effective date of this administrative regulation for all other surface coal mining and reclamation operations.~~

~~Section 7. Documents Incorporated by Reference. (1) The~~

~~following forms are hereby incorporated by reference:~~

~~(a) Supplemental Assurance, SME-42 (SA), July, 1994.~~

~~(b) Escrow Agreement (for use with Supplemental Assurance form only), SME-64 (SA), July, 1994.~~

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

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: May 4, 2012

FILED WITH LRC: May 4, 2012 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 21, 2012 at 10:00 A.M. (Eastern Time) at Conference Room D-16 of the Department for Natural Resources at #2 Hudson Hollow, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing June 14, 2012, 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 July 2, 2012. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, #2 Hudson Hollow, Frankfort, Kentucky 40601, phone (502) 564-6940, fax (502) 564-5698, Email Michael.Mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth requirements for keeping reclamation operations, including backfilling, grading, soil preparation and revegetation, contemporaneous with mining operations.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide information regarding reclamation standards and operations on mine sites.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 350 requires the cabinet to promulgate rules and administrative regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during surface mining activities and for restoration and reclamation of surface areas affected by mining activities. This administrative regulation provides the information required for permit holders to accomplish required reclamation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by providing necessary information for the permit holder to accomplish the required reclamation of mine sites.

(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 information related to supplemental assurance and places it in a new administrative regulation related to bonding. The new administrative regulation is 405 KAR 10:015.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to place all the information related to bonding and supplemental assurance in one administrative regulation. This will make this information easier to find for regulated entities.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment removes the information related to supplemental assurance. Supplemental assurance is more closely related to bonding and more appropriately belongs in 405 KAR Chapter 10.

(d) How the amendment will assist in the effective administration of the statutes: Removal of the supplemental assurance information does not related directly to reclamation. Therefore, removal of this information will leave only information related directly to requirements and standards related to reclamation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact all surface coal mine permit holders. There are approximately 870 currently bonded.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will not place new requirements on regulated entities. The information is simply being relocated into a different administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will not be a cost to the regulated entity associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All the information related to bonding and supplemental assurance will be located in one place as opposed to two separate locations. Therefore the information will be easier to locate for regulated entities.

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

(a) Initially: This amendment will not cost the agency additional funds to implement.

(b) On a continuing basis: This amendment will not cost the agency additional funds to implement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General fund and federal fund dollars will be used to fund this 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: There will not be a need to increase fees or funding to administer the amendments to this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation will not increase nor does it establish any fees.

(9) TIERING: Is tiering applied? No. All entities that hold a permit with the agency will be held to the same reclamation 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? The Division of Mine Permits and Division of Mine Reclamation and Enforcement.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.028, 350.093, 350.100, and 350.465

4. Estimate the effect of this administrative regulation on the expenditures and revenues 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 amendment will not generate funds for use by the cabinet.

(b) How 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

new administrative regulation will not generate funds for use by the cabinet on a continuing basis.

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

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

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: NA

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. Part 730

2. State Compliance Standards. KRS 350.062 and 405 KAR 16:020.

3. Minimum or uniform standards contained in the federal mandate. 30 C.F.R. 800.11 – 800.60, and 816.100

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. Yes, the original language did impose additional responsibilities. The federal regulations do not contain information on supplemental assurance.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The additional/different requirements are necessary to adequately address surface mining site disturbances.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 6:050. Luther Luckett Correctional Complex.

RELATES TO: KRS 72.020, 72.025(5), Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Luther Luckett Correctional Complex.

Section 1. Incorporation by Reference. (1) "Luther Luckett Correctional Complex policies and procedures," May 15, 2012[~~June 15, 2007~~], are incorporated by reference. Luther Luckett Correctional Complex Policies and Procedures include:

LLCC 02-05-03 Inmate Canteen Committee (Amended 5/15/12[~~4/15/03~~])
LLCC 02-05-03 Inmate Canteen Committee (Amended 5/15/12[~~4/15/03~~])
LLCC 02-05-05 Inmate Canteen (Amended 5/15/12)
LLCC 02-06-01 Inmate Control of Personal Funds (Amended 5/15/12[~~4/15/03~~])
LLCC 02-06-02 Storage and Disposition of Monies Received on Weekends, Holidays and between 4 p.m. and 8 a.m. Weekdays (Amended 5/15/12)
[~~LLCC 04-03-01 Suicide Intervention and Prevention Training~~]
LLCC 05-02-02 Outside Consultation and Research (Amended 5/15/12)
LLCC 06-02-01 Open Records (Amended 5/15/12) [~~Release of Information~~]
[~~LLCC 06-03-01 Procedure for Reporting Inmate Misconduct Following Favorable Recommendation by the Parole Board~~]
[~~LLCC 06-05-01 Psychological and Psychiatric Reports~~]
LLCC 08-04-01 Fire Safety (Amended 5/15/12)
LLCC 09-14-02 Guidelines for Contractors (Amended 5/15/12)
LLCC 09-18-01 Search Plan (Amended 5/15/12)
LLCC 09-18-03 Contraband Control: Collection, Preservation, Disposition of Contraband, and Identification of Physical Evidence (Amended 5/15/12)
LLCC 09-25-01 Procedure for Maintaining Current Inmate Photographs (Amended 5/15/12)
LLCC 09-29-01 Inmate Death (Amended 5/15/12)
LLCC 10-01-01 Special Management Inmates (Amended 5/15/12)
LLCC 11-01-01 Dining Room Guidelines (Amended 5/15/12)
LLCC 11-02-01 Food Services: Security (Amended 5/15/12[~~4/15/03~~])
LLCC 11-03-01 Food Services: General Guidelines (Amended 5/15/12[~~4/15/03~~])
LLCC 11-04-01 Food Service Meals (Amended 5/15/12[~~4/15/03~~])
LLCC 11-04-02 Food Service: Menu, Nutrition and Special Diets (Amended 5/15/12[~~4/15/03~~])
LLCC 11-05-02 Health Requirements of Food Handlers (Amended 5/15/12[~~4/15/03~~])
LLCC 11-06-01 Food Services: Inspections and Sanitation (Amended 5/15/12[~~4/15/03~~])
LLCC 11-07-01 Food Services: Purchasing, Storage and Farm Products (Amended 5/15/12[~~4/15/03~~])
LLCC 12-01-01 Sanitation, Living Condition Standards and Clothing Issues (Amended 5/15/12)
LLCC 12-02-01 Laundry Services (Amended 5/15/12)
LLCC 12-03-01 Vermin and Insect Control (Amended 5/15/12)
LLCC 12-04-01 Personal Hygiene Items: Issuance and Replacement Schedule (Amended 5/15/12)
[~~LLCC 13-01-03 First Aid and CPR Training Program~~]
LLCC 13-02-01 Access to Healthcare (Amended 5/15/12) [~~Health Care Maintenance Services: Sick Call and Pill Call~~]
LLCC 13-02-02 Specialized Health Services (Amended 5/15/12)
LLCC 13-02-03 Vision Care, Prostheses and Orthodontic Devices (Amended 5/15/12) [~~and Optometry Services~~]
[~~LLCC 13-02-04 Emergency Medical, Dental Care and Mental Health~~]
LLCC 13-02-05 Medical Services Co-pay (Amended 5/15/12)
LLCC 13-03-01 Mental Health Services (Amended 5/15/12)
LLCC 13-03-02 Use of Psychotropic Medications (Amended 5/15/12)
LLCC 13-04-01 Inmate Medical Screenings and Health Evaluations (Amended 5/15/12)
[~~LLCC 13-04-02 Health Education and Special Health Programs~~]
LLCC 13-04-06 Psychological and Psychiatric Records (Added 5/15/12)
[~~LLCC 13-05-01 Medication Receipt, Storage, Dispensing and Administration~~]
LLCC 13-05-02 Self-Administration of Medication (Inmate) (Amended 5/15/12)
LLCC 13-06-01 Health Records (Amended 5/15/12)
[~~LLCC 13-06-02 Informed Consent~~]
LLCC 13-06-03 Notice of Inmate Family [~~in the Event~~] of Serious Illness, Surgery or Inmate Death (Amended 5/15/12)
LLCC 13-07-01 Serious and Infectious Diseases (Amended 5/15/12)
LLCC 13-07-02 Medical Waste Management (Amended 5/15/12)
LLCC 13-08-01 Restraint Approval (Amended 5/15/12) [~~Medical Restraints~~]
LLCC 13-09-01 Substance Abuse and Chemical Dependency

Program (Amended 5/15/12)
LLCC 14-01-01 Inmate Rights and Responsibilities (Amended 5/15/12)
LLCC 14-03-01 Inmate Legal Services (Amended 5/15/12)
LLCC 15-01-02 Inmate Housing Assignment (Amended 5/15/12) [~~Agreement~~]
LLCC 15-01-03 Operational Procedures of the Units (Amended 5/15/12)
LLCC 15-01-04 Rules [~~and Regulations~~] of the Unit (Amended 5/15/12)
LLCC 15-01-08 Searches and Control of Excess Property (Amended 5/15/12)
LLCC 15-01-09 Laundry Unit Services (Amended 5/15/12)
LLCC 16-01-01 Inmate Correspondence (Amended 5/15/12)
LLCC 16-01-02 Inmate Privileged or Legal Mail (Amended 5/15/12)
LLCC 16-01-03 Inmate Packages (Amended 5/15/12)
LLCC 16-02-01 Inmate Visiting (Amended 5/15/12)
LLCC 16-02-02 Extended and Special Visits (Amended 5/15/12)
LLCC 16-02-03 Restricted Visitation Privileges (Amended 5/15/12)
LLCC 16-03-04 Parole Hearings: Media and Visitors (Amended 5/15/12)
LLCC 17-01-01 Inmate Transportation, Reception and Discharge Process (Amended 5/15/12 [~~4/15/03~~])
LLCC 17-03-01 Assessment and Orientation (Amended 5/15/12)
LLCC 17-04-01 Personal Property Control (Amended 5/15/12)
LLCC 17-04-02 Missing or Stolen Inmate Personal Property (Amended 5/15/12)
LLCC 17-05-01 Appliances to Outside Dealers for Repair (Amended 5/15/12)
LLCC 18-01-01 Meritorious Housing (Amended 5/15/12)
LLCC 18-02-01 Minimum Security Unit Operations (Amended 5/15/12)
LLCC 19-01-02 Job Assignments and Dismissals (Amended 5/15/12)
[~~LLCC 19-01-03 Unassigned Status~~]
LLCC 20-01-01 Educational[~~Education~~] Programs (Amended 5/15/12)
LLCC 21-01-01 Library Services (Amended 5/15/12)
LLCC 22-01-01 Recreation and Inmate Activities (Amended 5/15/12)
LLCC 22-02-01 Inmate Clubs and Organizations (Amended 5/15/12)
LLCC 22-02-02 Inmate Photographs Project (Amended 5/15/12)
LLCC 22-05-02 Arts and Crafts Program (Amended 5/15/12)
LLCC 23-01-01 Religious Program (Amended 5/15/12)
LLCC 23-01-03 Inmate Family Emergency Notification (Amended 5/15/12) [~~Death or Other Emergency of Family Member and Notification of Inmates~~]
LLCC 24-01-01 Counseling and Social Services (Amended 5/15/12[~~4/15/03~~])
LLCC 25-01-01 Final Release (Amended 5/15/12[~~4/15/03~~])
LLCC 26-01-01 Citizen Involvement and Volunteer Services Program (Amended 5/15/12[~~6/10/03~~])
LLCC 26-02-01 Use of [~~Interns and~~] Students (Amended 5/15/12[~~6/10/03~~])
LLCC 26-02-02 Student and Volunteer Identification Badges [~~and Parking Tags~~] (Amended 5/15/12[~~6/10/03~~])
LLCC 26-03-01 Confidentiality of Information, Roles and Services of Consultants, Contract Personnel, Students, [~~Interns~~] and Volunteers (Amended 5/15/12 [~~4/15/03~~])

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m.

LADONNA H. THOMPSON, Commissioner

APPROVED BY AGENCY: May 14, 2012

FILED WITH LRC: May 15, 2012 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 21, 2012 at 9:00 a.m. at the Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 2, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person:

CONTACT PERSON: Amy V. Barker, Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the operation of Luther Luckett Correctional Complex regarding the rights and responsibilities of Luther Luckett Correctional Complex employees and the inmate population.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020 and to meet ACA accreditation requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operations of Luther Luckett Correctional Complex.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference provide direction and information to Luther Luckett Correctional Complex employees and the inmate population as to employee duties, inmate responsibilities, and the procedures to govern operations of the institution.

(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 policies and procedures to reflect changes in operations at the institution, clarify language, make changes to conform to KRS Chapter 13A, and update ACA standards.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020.

(c) How the amendment conforms to the content of the authorizing statutes: It permits the commissioner or his authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of Luther Luckett Correctional Complex.

(d) How the amendment will assist in the effective administration of the statutes: It makes changes to conform to Chapter 13A, to allow a clearer understanding of the policies by the Luther Luckett Correctional Complex employees and inmate population, thereby impacting the safety and security of the institution. Type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: 232 employees of the Luther Luckett Correctional Complex and 1,081 inmates and all visitors to Luther Luckett Correctional Complex.

(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: Staff and inmates will have to follow the changes made in the policies and procedures. The institution, employees, and inmates of the Department of Corrections will have to change their actions to comply with any operational changes made by this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): In general an increase in cost is not anticipated to the entities from the changes in operations made in the amendments. One exception to this is an increase in the amount initially charged to an inmate to have a broken appliance assessed by an outside repair company and for postage to return the appliance. An additional cost of $10.00 is being charged by the company which is being passed on to the inmate for the repair assessment and postage fee for appliance repair. No revenue is generated for LLCC by this pass through cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational changes will assist in the effective and orderly management of the institution.

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

(a) Initially: No additional cost anticipated

(b) On a continuing basis: No additional cost anticipated

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds budgeted for 2011-2012 fiscal year.

(7) Provide an assessment to whether an increase in fees or funding shall be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is anticipated; however, pass through costs for inmate appliance repair are described in (4)(b).

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No increase in fees anticipated; however, pass through costs for inmate appliance repair are described in (4)(b).

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulations applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendments to this regulation impact the operation of Luther Luckett Correctional Complex.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendments to this regulation do not create any revenue for Luther Luckett Correctional Complex or other government entity.

(b) How 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 do not create any revenue for Luther Luckett Correctional Complex or other government entity.

(c) How much will it cost to administer this program for the first year? No new programs are created. The amendments to this regulation impact how the Luther Luckett Correctional Complex operates, but do not increase costs from what was previously budgeted to the Department of Corrections.

(d) How much will it cost to administer this program for subsequent years? The amendments to this regulation impact how Luther Luckett Correctional Complex operates, but are not expected to increase costs from what will be budgeted to the Department of Corrections.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 6:110. Roederer Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Roederer Correctional Complex.

Section 1. Incorporation by Reference. (1) Roederer Correctional Complex policies and procedures, May 15, 2012[~~February 15, 2005~~], are incorporated by reference. Roederer Correctional Complex policies and procedures include:

[~~RCC 01-03-01 Institutional Organization Assignment of Responsibility and Channels of Communication~~
~~RCC 01-04-01 Monthly Reports Performance Criteria~~
~~RCC 01-06-01 Inmate Access to and Communication with Staff~~]
RCC 01-08-01 Public Information and News Media Access (Amended 05/15/12)
[~~RCC 01-10-01 Cooperation with Outside Bodies; Including Courts, ACA, Governmental Legislative, Executive, and Community Agencies~~
~~RCC 02-01-01 Fiscal Management: Organization~~
~~RCC 02-01-02 Fiscal Management: Accounting Procedures~~
~~RCC 02-01-03 Fiscal Management Agency Funds~~
~~RCC 02-01-04 Fiscal Management: Insurance~~
~~RCC 02-02-01 Fiscal Management Budget~~]
RCC 02-02-02 Inmate[~~Control of~~] Personal Funds (Amended 05/15/12)
[~~RCC 02-02-03 Storage and Disposition of Monies received on Weekends, Holidays, and Between 4 p.m. and 8 a.m. Weekdays~~]
RCC 02-02-05 Inmate Canteen Services (Amended 05/15/12)
[~~RCC 02-03-01 Fiscal Management Audits~~
~~RCC 02-04-01 Purchase Orders~~
~~RCC 02-04-02 Processing of Invoices~~
~~RCC 02-06-01 Property Inventory~~
~~RCC 03-02-01 Institutional Smoking Areas~~
~~RCC 04-01-01 Employee Training and Development~~
~~RCC 04-01-02 First Aid and CPR Training~~]
RCC 05-02-01 Consultants, Research, and Student Interns (Added 5/15/12)
[~~RCC 06-01-01 Offender Records~~]
RCC 06-03-01 Records Release of Information (Amended 05/15/12)
[~~RCC 06-03-02 Storage of Expunged Records~~
~~RCC 06-04-01 Court Trips~~
~~RCC 06-04-02 Receipt of Order of Appearance~~
~~RCC 07-01-01 Preventative Maintenance Plan~~
~~RCC 07-02-01 Permit Required Confined Space~~

[~~RCC 07-03-01 Mechanical Equipment Repair and Control of Hazardous Energy~~]
RCC 08-01-01 Fire Prevention (Amended 05/15/12)
[~~RCC 09-04-03 Duties and Responsibilities of the Fire and Safety Officer~~]
RCC 09-08-01 Operation of a Licensed Vehicle by an Inmate (Added 05/15/12)
RCC 09-10-01 Fishing At Roederer Correctional Complex Lakes (Added 05/15/12)
RCC 09-29-01 Tobacco Free Environment (Added 05/15/12)
RCC 10-01-02 Temporary Holding Cell Guidelines (Amended 05/15/12)
RCC 11-01-01 Food Service[~~: General~~] Guidelines (Amended 05/15/12
[~~RCC 11-02-01 Food Service: Security RCC 11-03-01 Dining Room Guidelines~~]
RCC 11-04-01 Food Service: Meals, Storage, Menu Nutrition and Alternative Items (Amended 05/15/12)
[~~RCC 11-04-02 Food Service: Menu, Nutrition and Alternative Items~~]
RCC 11-05-02 Sanitation and Health Requirements of Food Handlers (Amended 05/15/12)
[~~RCC 11-06-01 Food Service: Inspections and Sanitation~~
~~RCC 11-07-01 Food Service Purchasing and Storage~~]
RCC 12-01-01 Sanitation, Living Conditions and Clothing Issuance[~~Issuances~~] (Amended 05/15/12)
RCC 12-01-02 Bed Areas (Amended 05/15/12)
RCC 12-01-03 General Guidelines for Living Units (Amended 05/15/12)
RCC 12-02-01 Laundry Services (Amended 05/15/12) [~~Issuance of Clean Laundry and Receiving of Dirty Laundry~~]
RCC 12-03-01 Personal Hygiene Items: Issuance and Replacement [~~Placement~~] Schedule (Amended 05/15/12)
RCC 12-03-02 Barber Shop Services and Equipment Control (Amended 05/15/12)
[~~RCC 12-04-01 Institutional Inspections~~
~~RCC 12-05-02 Use of Noncombustible Receptacle~~]
RCC 12-07-01 Treatment of Inmates with Body Lice (Added 05/15/12)
[~~RCC 13-01-01 Organization of Health Services (Amended 4/12/05)~~]
RCC 13-02-01 Health Maintenance Services: Sick Call and Pill Call (Amended 05/15/12[~~4/12/05~~])
RCC 13-03-01 Dental Procedures and Sick Call (Amended 05/15/12[~~2/15/05~~])
RCC 13-04-01 Preliminary Health Evaluation and Establishment of Inmate[~~Offender~~] Medical Records (Amended 05/15/12[~~2/15/05~~])
[~~RCC 13-04-02 Medical Intake Processing for Offenders in Hold Status (Amended 4/12/05)~~]
RCC 13-06-03 Emergency Medical and Dental Care Services (Amended 05/15/12[~~4/12/05~~])
[~~RCC 13-07-01 Health Records (Amended 4/12/05)~~]
RCC 13-07-03 Use of Pharmaceutical Products (Amended 05/15/12[~~4/12/05~~])
RCC 13-07-04 Self-Administered Medication Program (Amended 05/15/12[~~2/15/05~~])
RCC 13-09-01 Notification of an Inmate's Family Due to Serious Illness, Surgery, or Death[~~Offender Family in the Event of Serious Illness, Surgery, or Offender Death~~] (Amended 05/15/12[~~4/12/05~~])
RCC 13-10-01 Health Education and Special Health Programs (Amended 05/15/12[~~4/12/05~~])
RCC 13-11-01 Informed Consent (Amended 05/15/12[~~4/12/05~~])
RCC 13-13-01 Identification and Transfer Guidelines for Inmates with Psychological, Psychiatric or Severe Medical Disabilities[~~of Inmates with Psychological, Psychiatric or Severe Medical Disabilities and Transfer Guidelines~~] (Amended 05/15/12[~~4/12/05~~])
[~~RCC 13-15-01 Medical Restraints (Amended 2/15/05)~~]
RCC 13-16-01 Specialized Health Services (Amended 05/15/12[~~4/12/05~~])
[~~RCC 13-17-01 Vision Care, Optometry Services, Prostheses, and Orthodontic Devices (Amended 2/15/05)~~]
RCC 13-18-01 Infection Control (Amended 05/15/12[~~2/15/05~~])
RCC 13-19-01 Medical Waste Management (Amended 05/15/12[~~4/12/05~~])
RCC 13-20-01 Medical Services Co-pay (Amended 05/15/12[~~Added 4/12/05~~])
RCC 13-21-01 Mental Health Services (Amended 05/15/12[~~Added 4/12/05~~])[~~RCC 13-22-01 First Aid Kits (Added 2/15/05) RCC 13-23-01 Injury Prevention (Added 4/12/05)~~]
RCC 13-24-01 Substance Abuse and Chemical Dependency Program (Amended 05/15/12[~~Added 2/15/05~~])
RCC 14-01-01 Inmate Rights and Responsibilities (Amended 05/15/12)
RCC 14-02-01 Legal Services Program (Amended 05/15/12)
RCC 14-03-01 Marriage of Inmates (Amended 05/15/12)
RCC 16-01-01 Inmate Visiting (Amended 05/15/12[~~3/13/03~~])
[~~RCC 16-01-02 Night Visiting Program (Amended 3/13/03)~~
~~RCC 16-01-03 Extended and Special Visits (Amended 3/13/03)~~]
RCC 16-02-01 Telephone Communications (Amended 05/15/12[~~3/13/03~~])
RCC 16-03-01 Mail Regulations (Amended 05/15/12[~~5/13/03~~])
RCC 17-01-01 Assessment and[~~/~~] Orientation Procedure for Intra-system Transfers (Amended 05/15/12)
RCC 17-01-02 Identification Department Admission and Discharge Procedures (Amended 05/15/12[~~5/13/03~~])
[~~RCC 17-03-01 Inmate Personal Property and Property Control (Amended 3/13/03)~~
~~RCC 17-05-02 Housing Unit Assignment Assessment and Classification Center (Amended 5/13/03)~~
~~RCC 17-05-03 Notifying Inmate's Families of Admission and Procedures for Mail and Visiting~~
~~RCC 17-05-04 Assessment Unit Operations, Rules and Regulations~~]
RCC 17-05-05 Assessment Center[~~Unit~~] Operations and Reception Program (Amended 05/15/12)
RCC 18-01-01 Classification [~~Committees~~] (Amended 05/15/12[~~3/13/03~~])
[~~RCC 18-02-01 Classification Process (Amended 3/13/03)~~
~~RCC 18-03-01 Casework Services~~]
RCC 19-01-01 Job and Program Assignments (Amended 05/15/12[~~3/13/03~~])
[~~RCC 19-01-03 Farm Management and Production Guidelines~~]
RCC 20-01-01 Education Program (Amended 05/15/12)
[~~RCC 20-01-02 Testing and Verification~~]
RCC 20-01-03 Vocational Horticulture Program (Amended 05/15/12)
RCC 21-01-01 Library Services (Amended 05/15/12[~~5/13/03~~])
RCC 22-01-01 Recreation and Inmate Activities (Amended 05/15/12[~~3/13/03~~])
RCC 22-03-01 Inmate Clubs and Organizations (Amended 05/15/12)
RCC 22-03-02 Alcohol Anonymous and Narcotics[~~Narcotic~~] Anonymous Club Sponsored Picture Project (Amended 05/15/12)
RCC 22-04-01 Arts and Crafts Program (Amended 05/15/12[~~Added 3/13/03~~])
RCC 23-01-01 Religious Services (Amended 05/15/12[~~5/13/03~~])
RCC 24-01-01 Social Services and Counseling (Amended 05/15/12[~~3/13/03~~])
RCC 25-01-01 Furloughs (Amended 05/15/12[~~5/13/03~~])
RCC 25-05-01 Inmate Discharge Procedure (Amended 05/15/12[~~3/13/03~~])
RCC 26-01-01 Citizens Involvement and Volunteer Services Program (Amended 05/15/12[~~5/13/03~~])

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Legal Services, Justice and Public Safety Cabinet, 125 Holmes Street, 2nd Floor,

Frankfort, Kentucky 40601[~~2439 Lawrenceburg Road, P.O. Box 2400, Frankfort, Kentucky 40602-2400~~], Monday through Friday, 8 a.m. to 4:30 p.m.

LADONNA H. THOMPSON, Commissioner

APPROVED BY AGENCY: May 14, 2012

FILED WITH LRC: May 15, 2012 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 21, 2012, at 9:00 a.m. at the Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 2, 2012. 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: Amber Arnett, Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Debbie Judd (502) 222-0173

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the Roederer Correctional Complex including the rights and responsibilities of employees and the inmate population.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035, 197.020, 197.025(6) and to meet American Correctional Association (ACA) requirements.

(c) How this administrative regulation conforms to the content of the authorizing statues: The regulation governs the operations of the Roederer Correctional Complex.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference provide direction and information to Corrections employees concerning their duties and responsibilities of their jobs and to inmates concerning their rights and responsibilities.

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

(a) How the amendment will change this existing administrative regulation: The amendment brings the Roederer Correctional Complex into compliance with ACA Standards and updates current practices for the department and its facilities.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196.035, 197.020, and 197.025(6).

(c) How the amendment conforms to the content of the authorizing statutes: It permits the Commissioner and the Warden to implement or amend practices or procedures to ensure the safe and efficient operation of the Roederer Correctional Complex.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff and inmates information concerning the effective and orderly management of the Roederer Correctional Complex.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects the Roederer Correctional Complex (RCC), its 254 employees and 1,102 inmates, and all visitors to RCC.

(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: Staff and inmates will have to follow the changes made in policies and procedures. The institution, employees, and inmates of the Department of Corrections will have to change their actions to comply with any operational changes made by this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendments do not create any anticipated increase in costs of compliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational changes will assist in the effective and orderly management of the RCC.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Roederer Correctional Complex budgeted 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: Changes will be implemented with budgeted funds.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendments to this regulation impact the operation of Roederer Correctional Complex.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendments to this regulation do not create any revenue for the Roederer Correctional Complex, or other government entity.

(b) How 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 do not create any revenue for the Roederer Correctional Complex or other government entity.

(c) How much will it cost to administer this program for the first year? No new programs are created. The amendments to this regulation impact how the Roederer Correctional Complex operates, but do not increase costs from what was previously budgeted to the Roederer Correctional Complex.

(d) How much will it cost to administer this program for subsequent years? The amendments to this regulation impact how the Roederer Correctional Complex operates, but are not expected to increase costs from what will be budgeted to the Roederer Correctional Complex.

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 2:300. General.

RELATES TO: KRS 338.015, 29 C.F.R. 1910.3-1910.7, 1910.9

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. 1910.3-1910.7 and 1910.9 establish occupational safety and health standards found to be national consensus standards or established federal standards. This administrative regulation establishes the general standards to be enforced by the Department of Workplace Standards in general industry.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means Secretary, Labor Cabinet or Commissioner, Department of Workplace Standards, Labor Cabinet.

(3) "C.F.R." means Code of Federal Regulations.

(4) "Employee" is defined by KRS 338.015(2).

(5) "Employer" is defined by KRS 338.015(1).

(6) "Established federal standard" is defined by KRS 338.015(10).

(7) "National consensus standard" is defined by KRS 338.015(9).

(8) "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(9) "Standard" means "occupational safety and health standard" as defined by KRS 338.015(3).

(10) "U.S. Department of Labor" means U.S. Department of Labor or Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, general industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Administration:

(1) 29 C.F.R. 1910.3-1910.7 and 1910.9, revised July 1, 2011;[~~2009; and~~]

(2) The revisions to 29 C.F.R. 1910.6 as published in the March 26, 2012 Federal Register, Volume 77, Number 58; and

(3) The revisions to 29 C.F.R. 1910.6 as published in the December 5, 2011 Federal Register, Volume 76, Number 233 and confirmed in the March 8, 2012 Federal Register, Volume 77, Number 46.[~~September 9, 2009 Federal Register, Volume 74, Number 173.~~]

MARK S. BROWN, Chairman

APPROVED BY AGENCY: May 8, 2012

FILED WITH LRC: May 11, 2012 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 22, 2012 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 July 2, 2012. 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 2011 and establishes the amendments to 29 C.F.R. 1910.6 published in the March 26, 2012 Federal Register, Volume 77, Number 58 and the amendments to 29 C.F.R. 1910.6 published in the December 5, 2011 Federal Register, Volume 76, Number 233 and confirmed in the March 8, 2012 Federal Register, Volume 77, Number 46. As a result of the adoption of the final rule published in the March 26, 2012 Federal Register and the adoption of the December 5, 2011 direct final rule that was confirmed in the March 8, 2012 Federal Register, Volume 77, Number 46, 803 KAR 2:300 must be amended to include the adopted changes. With the March 26, 2012 final rule OSHA is amending the hazard communication standard and other affected regulations to conform to the Globally Harmonized System of Classification and Labelling of Chemicals (GHS) as established by the United Nations (UN). The amendments are consistent with Executive Order 13563 requiring the assessment, modification, and improvement of existing rules. In 2002, the United Nations formally adopted the GHS with the goal of implementing the GHS internationally for consistency with chemical-related information. Since the GHS was adopted by the UN, several revisions have taken place. The amendments in the March 26, 2012 final rule are based on Revision 3 of the GHS. Because the provisions of the GHS will be continuously updated by the UN, OSHA will be reviewing the regulation and amending the requirements as needed to ensure consistency globally. In efforts to comport to the internationally mandated GHS, OSHA has made several modifications regarding classification and labeling of chemicals, most of which affect the hazard communication standard. The modifications to the hazard communication standard revise the criteria for classifying chemicals as well as the labeling requirements for those chemicals. Definitions in the hazard communication standard are being revised and a new format as well as new information for safety data sheets is required. Other standards are also affected by the changes to the hazard communication standard in order to bring consistency between those standards. The other standards affected include the flammable and combustible liquids regulations, process safety management, and most substance specific health regulations. The requirements related to classifying hazards experienced substantial changes with the identification of hazards by category. There are 10 health hazard and 16 physical hazard classifications under the new rule. Within those hazard classes, chemicals are then placed into a hazard category. For instance, flammable solids are a type of physical hazard. Category 1 flammable solids have a burning time less than five minutes and Category 2 flammable solids have a burning time greater than five minutes. The current hazard communication standard recognizes health and physical hazards but the number of hazard classes increases with this final rule. In addition to the expansion of physical and health hazards, OSHA has included a "hazards not otherwise classified" class with this final rule. Combustible dust falls within the "hazards not otherwise classified" class. Chemical hazard classification changes come with specific information and requirements manufacturers of chemicals must

follow to determine the hazard classification. This provides consistency among all chemical manufacturers. As aforementioned, labels will also be changing with the implementation of this final rule. Presently labels are required to have the following information: the identity of the hazardous chemical, the appropriate hazard warning, and the name and address of the chemical manufacturer, importer or other responsible party. Labels required by this final rule will have the product name or identifier, pictogram for the hazard class, a signal word such as "Danger" or "Warning", a hazard statement such as "fatal if swallowed", precautionary information including first aid information, supplier information, and any supplemental information. Material safety data sheets under the present rule will now be termed safety data sheets under the new rule and will have sixteen different headings, four of which are not required under the current hazard communication rule. The four new headings are "ecological information," "dispersal considerations," "transport information," and "regulatory information." While all 16 headings are required by the GHS, the four headings are not within OSHA's jurisdiction. Training on the new requirements is mandated by the final rule. OSHA's date for training implementation is Dec. 1, 2013. Labels and safety data sheets must comply with the new requirements by June 1, 2015. Employers will be given until June 1, 2016 to update their hazard communication programs or any other workplace signs. The final rule amendment specific to this KAR, changes information related to those standards incorporated by reference within OSHA's regulations. With the December 5, 2011 final rule, OSH is revising standards referenced in the acetylene standard. This final rule merely updates references to standards incorporated by reference within the acetylene standard. With this final rule, the standard will now reference the 2009 version of the Compressed Gas Association pamphlet instead of the 2003 version. 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 March 26, 2012 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by September 26, 2012. The amendment related to the December 5, 2011 final rule and confirmed by the March 8, 2012 final rule did not impose any additional or more stringent requirements on employers than the existing standard. The Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, the amendments to 803 KAR 2:300, related to the March 26, 2012 Federal Register final rule and the December 5, 2011 direct final rule, were both adopted by the Kentucky OSH Standards Board on May 08, 2012.

(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 2011 and establishes the amendments to 29 C.F.R. 1910.6 published in the March 26, 2012 Federal Register, Volume 77, Number 58 and the amendments to 29 C.F.R. 1910.6 published in the December 5, 2011 Federal Register, Volume 76, Number 233 and confirmed in the March 8, 2012 Federal Register, Volume 77, Number 46. The amendments to the regulation revise references to consensus standards incorporated by reference within OSHA standards. 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 March 26, 2012 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by September 26, 2012. The amendment related to the December 5, 2011 final rule and confirmed by the March 8, 2012 final rule did not impose any additional or more stringent requirements on employers than the existing standard. The Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, the amendments to 803 KAR 2:300, related to the March 26, 2012 Federal Register final rule and the December 5, 2011 direct final rule, were both adopted by the Kentucky OSH Standards Board on May 08, 2012.

(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 changes references to consensus standards incorporated by reference within OSHA's standards. No additional compliance duties are expected from the revisions to 1910.6.

(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 compliance with the entire March 26, 2012 final rule will have a total annualized cost of $201 million. The major cost elements will include the classification of the chemical hazards and the revision of material safety data sheets. OSHA expects the net benefits of the final rule to reach $556 million annually. The specific amendment to this regulation is not expected to create any additional costs to the entities. Compliance costs specific to this state were not available. There are no expected costs associated with the December 5, 2011 direct final rule Revising Standards Reference in the Acetylene Standard.

(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 specific 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 March 26, 2012 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by September 26, 2012. The amendment related to the December 5, 2011 final rule and confirmed by the March 8, 2012 final rule did not impose any additional or more stringent requirements on employers than the existing standard. The Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, the amendments to 803 KAR 2:300, related to the March 26, 2012 Federal Register final rule and the December 5, 2011 direct final rule, were both adopted by the Kentucky OSH Standards Board on May 08, 2012.

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 March 26, 2012 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by September 26, 2012. The amendment related to the December 5, 2011 final rule and confirmed by the March 8, 2012 final rule did not impose any additional or more stringent requirements on employers than the existing standard. The Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, the amendments to 803 KAR 2:300, related to the March 26, 2012 Federal Register final rule and the December 5, 2011 direct final rule, were both adopted by the Kentucky OSH Standards Board on May 08, 2012.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendments to the regulation do 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. The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

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 provides that compliance with the entire March 26, 2012 final rule will have a total annualized cost of $201 million. The major cost elements will include the classification of the chemical hazards and the revision of material safety data sheets. OSHA expects the net benefits of the final rule to reach $556 million annually. The specific amendment to this regulation is not expected to create any additional costs to the entities. Compliance costs specific to this state were not available. There are no expected costs associated with the December 5, 2011 direct final rule Revising Standards Reference in the Acetylene Standard.

(d) How much will it cost to administer this program for subsequent years? OSHA provides that compliance with the entire March 26, 2012 final rule will have a total annualized cost of $201 million for the more than 6 million employers expected to be affected by this rule. No information was available specific to this state. There are no expected costs associated with the December 5, 2011 direct final rule Revising Standards Reference in the Acetylene Standard.

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 compliance with the entire March 26, 2012 final rule will have a total annualized cost of $201 million. OSHA expects the net benefits of the final rule to reach $556 million annually. The specific amendment to this regulation is not expected to create any additional costs to the entities. No information was available specific to this state. There are no expected costs associated with the December 5, 2011 direct final rule Revising Standards Reference in the Acetylene Standard.

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 2:307. Hazardous materials.

RELATES TO: KRS Chapter 338, 29 C.F.R. 1910.101-1910.126

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. 1910.101-1910.126 establishes federal requirements relating to hazardous materials.[~~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 hazardous materials standards to be enforced by the Department of Workplace Standards in general industry.

Section 1. Definitions. (1) "Assistant secretary" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(2) "C.F.R." means Code of Federal Regulations.

(3) "Employee" is defined by KRS 338.015(2).

(4) "Employer" is defined by KRS 338.015(1).

(5) "Standard" means "occupational safety and health standard" as defined by KRS 338.015(3).

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation and the requirements established in Section 3 of this administrative regulation, general industry shall comply with the following federal requirements published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) C.F.R. 1910.101-1910.126, revised July 1, 2011;[~~2009; and~~]

(2) The revisions to 29 C.F.R. 1910.102 as published in the December 5, 2011 Federal Register, Volume 76, Number 233 and confirmed in the March 8, 2012 Federal Register, Volume 77, Number 46;

(3) The revisions to 29 C.F.R. 1910.119 and 29 C.F.R. 1910.120 as published in the December 27, 2011 Federal Register, Volume 76, Number 248; and

(4) The revisions to Subpart H of 29 C.F.R. 1910 as published in the March 26, 2012 Federal Register, Volume 77, Number 58.[~~The revisions to 29 C.F.R. 1910.102 as published in the August 11, 2009 Federal Register, Volume 74, Number 153 and confirmed in the November 10, 2009 Federal Register, Volume 74, Number 216.~~]

Section 3. Automotive Service Station. (1) The language in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1910.106(a)(3).

(2) Automotive service station, or service station, shall include that portion of property where flammable or combustible liquids used as motor fuels are stored and dispensed from fixed equipment into the fuel tanks of motor vehicles and shall include any facilities available for the sale and service of tires, batteries, or accessories, and for minor automotive maintenance work, and shall also include private stations not accessible or open to the public such as those used by commercial, industrial, or governmental establishments. This section shall not apply to agriculture.

MARK S. BROWN, Chairman

APPROVED BY AGENCY: May 8, 2012

FILED WITH LRC: May 11, 2012 at 2 pm.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 22, 2012 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 July 2, 2012. 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 2011 and establishes the amendments to Subpart H published in the March 26, 2012 Federal Register, Volume 77, Number 58 and the amendments to Subpart H published in the December 5, 2011 Federal Register, Volume 76, Number 233 and confirmed in the March 8, 2012 Federal Register, Volume 77, Number 46. Section 2 also establishes the amendments to Subpart H of 29 C.F.R. 1910 as published in the December 27, 2011 Federal Register, Volume 76, Number 248. Section 3 of the regulations changes the language of the federal requirement related to flammable and combustible liquids at automotive service stations. This different requirement has been enforced by the Kentucky OSH Program prior to 1996. As a result of the adoption of these final rules 803 KAR 2:307 must be amended to include the adopted changes. With the March 26, 2012 final rule OSHA is amending the hazard communication standard and other affected regulations to conform to the Globally Harmonized System of Classification and Labelling of Chemicals (GHS) as established by the United Nations (UN). The amendments are consistent with Executive Order 13563 requiring the assessment, modification, and improvement of existing rules. In 2002, the United Nations formally adopted the GHS with the goal of implementing the GHS internationally for consistency with chemical-related information. Since the GHS was adopted by the UN, several revisions have taken place. The amendments in the March 26, 2012 final rule are based on Revision 3 of the GHS. Because the provisions of the GHS will be continuously updated by the UN, OSHA will be reviewing the regulation and amending the requirements as needed to ensure consistency globally. In efforts to comport to the internationally mandated GHS, OSHA has made several modifications regarding classification and labeling of chemicals, most of which affect the hazard communication standard. The modifications to the hazard communication standard revise the criteria for classifying chemicals as well as the labeling requirements for those chemicals. Definitions in the hazard communication standard are being revised and a new format as well as new information for safety data sheets is required. Other standards are also affected by the changes to the hazard communication standard in order to bring consistency between those standards. The other standards affected include the flammable and combustible liquids regulations, process safety management, and most substance specific health regulations. The requirements related to classifying hazards experienced substantial changes with the identification of hazards by category. There are 10 health hazard and 16 physical hazard classifications under the new rule. Within those hazard classes, chemicals are then placed into a hazard category. For instance, flammable solids are a type of physical hazard. Category 1 flammable solids have a burning time less than five minutes and Category 2 flammable solids have a burning time greater than five minutes. The current hazard communication standard recognizes health and physical hazards but the number of hazard classes increases with this final rule. In addition to the expansion of physical and health hazards, OSHA has included a "hazards not otherwise classified" class with this final rule. Combustible dust falls within the "hazards not otherwise classified" class. Chemical hazard classification changes come with specific information and requirements manufacturers of chemicals must follow to determine the hazard classification. This provides consistency among all chemical manufacturers. As aforementioned, labels will also be changing with the implementation of this final rule. Presently labels are required to have the following information: the identity of the hazardous chemical, the appropriate hazard warning, and the name and address of the chemical manufacturer, importer or other responsible party. Labels required by this final rule will have the product name or identifier, pictogram for the hazard class, a signal word such as "Danger" or "Warning", a hazard statement such as "fatal if swallowed", precautionary information including first aid information, supplier information, and any supplemental information. Material safety data sheets under the present rule will now be termed safety data sheets under the new rule and will have sixteen different headings, four of which are not required under the current hazard communication rule. The four new headings are "ecological information," "dispersal considerations," "transport information," and "regulatory information." While all four headings are required by the GHS, the four headings are not within OSHA's jurisdiction. Training on the new requirements is mandated by the final rule. OSHA's date for training implementation is Dec. 1, 2013. Labels and safety data sheets must comply with the new requirements by June 1, 2015. Employers will be given until June 1, 2016 to update their hazard communication programs or any other workplace signs. The final rule amendment specific to this KAR, changes the terminology used in many Sub-

part H standards related to flammable and combustible liquids in order to maintain consistency with the changes to the hazard communication standard With the December 5, 2011 final rule, OSHA is revising standards referenced in the acetylene standard. This final rule merely updates references to standards incorporated by reference within the acetylene standard. With this final rule, the standard will now reference the 2009 version of the Compressed Gas Association pamphlet instead of the 2003 version. With the December 27, 2011 final rule, OSHA is correcting typographical errors and making non-substantive technical amendments to a number of OSHA standards. These changes do not modify or established new rights or obligations for employers or employees. The correction to this specific KAR amends location references to incorrect information or information that has changed since the promulgation of the regulation. 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 March 26, 2012 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by September 26, 2012. The amendments related to the December 5, 2011 final rule and confirmed by the March 8, 2012 final rule, as well as the December 27, 2011 rule did not impose any additional or more stringent requirements on employers than the existing standard. The Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, the amendments to 803 KAR 2:307, related to the March 26, 2012 Federal Register final rule, the December 5, 2011 direct final rule, and the December 27, 2011 were all adopted by the Kentucky OSH Standards Board on May 08, 2012.

(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 2011 and establishes the amendments to Subpart H of 29 C.F.R. 1910 published in the March 26, 2012 Federal Register, Volume 77, Number 58, the December 5, 2011 Federal Register, Volume 76, Number 233 and confirmed in the March 8, 2012 Federal Register, Volume 77, Number 46 as well as the December 27, 2011 Federal Register, Volume 76, Number 248. The amendments to the regulation revise references to consensus standards incorporated by reference within OSHA standards and revise incorrect references to locations of referenced information. The amendments also revise a number of regulations to provide consistency with the definitions and labeling requirements associated with the GHS related changes to the hazard communication standard. 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 March 26, 2012 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by September 26, 2012. The amendments related to the December 5, 2011 final rule and confirmed by the March 8, 2012 final rule, as well as the December 27, 2011 rule did not impose any additional or more stringent requirements on employers than the existing standard. The Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, the amendments to 803 KAR 2:307, related to the March 26, 2012 Federal Register final rule, the December 5, 2011 direct final rule, and the December 27, 2011 were all adopted by the Kentucky OSH Standards Board on May 08, 2012.

(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: The December 27, 2011 and the December 5, 2011 rules will not impact business by this amendment. The March 26, 2012 final rule related to the GHS will require employers to adjust to the new definitions and revisions to hazard communication standard. Changes to Subpart H will provide consistency between the hazard communication and Subpart H regulations.

(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 compliance with the entire March 26, 2012 final rule will have a total annualized cost of $201 million. The major cost elements will include the classification of the chemical hazards and the revision of material safety data sheets. OSHA expects the net benefits of the final rule to reach $556 million annually. Compliance costs specific to this state were not available. There are no expected costs associated with the December 5, 2011 direct final rule Revising Standards Reference in the Acetylene Standard or the December 27, 2011 rule correcting non-substantive errors in the regulations

(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 specific 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 March 26, 2012 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by September 26, 2012. The amendments related to the December 5, 2011 final rule and confirmed by the March 8, 2012 final rule, as well as the December 27, 2011 rule did not impose any additional or more stringent requirements on employers than the existing standard. The Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, the amendments to 803 KAR 2:307, related to the March 26, 2012 Federal Register final rule, the December 5, 2011 direct final rule, and the December 27, 2011 were all adopted by the Kentucky OSH Standards Board on May 08, 2012.

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 March 26, 2012 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by September 26, 2012. The amendments related to the December 5, 2011 final rule and confirmed by the March 8, 2012 final rule, as well as the December 27, 2011 rule did not impose any additional or more stringent requirements on employers than the existing standard. The Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, the amendments to 803 KAR 2:307, related to the March 26, 2012 Federal Register final rule, the December 5, 2011 direct final rule, and the December 27, 2011 were all adopted by the Kentucky OSH Standards Board on May 08, 2012.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Section 3 of this regulation currently imposes stricter requirements than those of OSHA; this different requirement has been in effect since 1996. This different requirement clarifies that the regulation applies to automotive service stations not accessible by the public. The amendments to the regulation do 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 of this regulation currently imposes stricter requirements than those of OSHA; this different requirement has been in effect since 1996. This different requirement clarifies that the regulation applies to automotive service stations not accessible by the public. The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

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 provides that compliance with the entire March 26, 2012 final rule will have a total annualized cost of $201 million. The major cost elements will include the classification of the chemical hazards and the revision of material safety data sheets. OSHA expects the net benefits of the final rule to reach $556 million annually. The specific amendment to this regulation is not expected to create any additional costs to the entities. Compliance costs specific to this state were not available. There are no expected costs associated with the December 5, 2011 direct final rule Revising Standards Reference in the Acetylene Standard or the December 27, 2011 rule providing technical amendments within a number of regulations.

(d) How much will it cost to administer this program for subsequent years? OSHA provides that compliance with the entire March 26, 2012 final rule will have a total annualized cost of $201 million for the more than 6 million employers expected to be affected by this rule. No information was available specific to this state. There are no expected costs associated with the December 5, 2011 direct final rule Revising Standards Reference in the Acetylene Standard or the December 27, 2011 rule providing technical amendments within a number of regulations.

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 compliance with the entire March 26, 2012 final rule will have a total annualized cost of $201 million. OSHA expects the net benefits of the final rule to reach $556 million annually. The specific amendment to this regulation is not expected to create any additional costs to the entities. No information was available specific to this state. There are no expected costs associated with the December 5, 2011 direct final rule Revising Standards Reference in the Acetylene Standard or the December 27, 2011 rule providing technical amendments within a number of regulations.

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. 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, 2011[~~2010~~]; and

(2) The amendments to 29 C.F.R. 1910.146 published in the December 27, 2011, Federal Register, Volume 76, Number 248.[~~(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;~~

~~(3) The correction to 29 C.F.R. 1910.145 and 1910.147 published in the July 25, 2011, Federal Register, Volume 76, Number 142; and~~

~~(4) 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. As approved by the Kentucky Occupational Safety and Health Standards Board.

MARK S. BROWN, Chairman

APPROVED BY AGENCY: May 8, 2012

FILED WITH LRC: May 11, 2012 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 22, 2012 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 July 2, 2012. 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 updates 29 C.F.R. 1910.141—1910.147 to July 1, 2011 and establishes the amendments to 29 C.F.R. 1910.146 published in the December 27, 2011, Federal Register, Volume 76, Number 248. OSHA is correcting a cross-reference in the permit-required confined spaces standard. Section 1910.146(d)(3) lists safe practices for permit-space entry operations. When OSHA revised 1910.146 in 1998, it inserted a new practice and renumbered the remaining practices. However, during that rulemaking, OSHA did not revise the cross-reference to this provision. This notice corrects that oversight. This amendment will not reduce the employee protections put into place by the standards OSHA is updating under this rulemaking. In fact, this rulemaking likely will enhance employee safety by eliminating confusing requirements and clarifying employer obligations. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA.

(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: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 updates the C.F.R. to July 1, 2011 and establishes the amendments to 29 C.F.R. 1910.146 published in the December 27, 2011 Federal Register, Volume 76, Number 248.

(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**.** 29 C.F.R. 1953.5 requires state implementation of a new federal standard, or a more stringent amendment, within six (6) months of the promulgation date of the final rule. However, this is a technical amendment and state adoption is not required. Nevertheless, in order to remain consistent with the federal standards, this amendment to 803 KAR 2:309 was adopted by the Kentucky OSH Standards Board at its meeting on May 8, 2012.

(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 requirement, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organi-

zations, or state and local governments affected by this administrative regulation: This administrative regulation affects all private and public sector employers in the Commonwealth engaged in general industry activities covered by KRS Chapter 338.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment does not add occupational safety and health requirements to the employer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Because the amendment requires no new occupational safety and health requirements, no costs are expected to be associated with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): OSHA states that workers provided the necessary hazard information will more fully participate in, and support, the protective measures instituted in their workplaces.

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

(a) Initially: There will be no cost to implement this regulation.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement this revision.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This ordinary administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 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. 29 C.F.R. 1953.5 requires state implementation of a new federal standard, or a more stringent amendment, within six (6) months of the confirmation of the effective date of the final rule. However, this is a technical amendment that does not require state adoption. Nevertheless, this amendment was adopted by the Kentucky Occupational Safety and Health Standards Board at its May 8, 2012 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. OSHA's amendment to 1910.146 is not required to be adopted by Kentucky. Nevertheless, since there is not an effective alternative, it was adopted by the Kentucky Occupational Safety and Health Standards Board at its May 8, 2012 meeting.

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 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? This amendment will not impose any cost to the employer.

(d) How much will it cost to administer this program for subsequent years? This amendment will not impose any cost to the employer.

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 2:313. 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 require the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. 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" is defined by KRS 338.015(3).

(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 1910.184, revised July 1, 2011[~~2010~~]; and

(2) The amendment to 29 C.F.R. 1910.177 as published in the

December 27,[~~May 2,~~] 2011 Federal Register, Volume 76, Number 248.[~~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. When a truck that falls within the scope of 29 C.F.R. 1910.178 is equipped with vertical only, or vertical and horizontal controls elevatable with the lifting carriage or forks for lifting personnel, the following shall be required:

(1) Use of a safety platform firmly secured to the lifting carriage or forks;

(2) Means whereby personnel on the platform can shut off power to the truck; and

(3) Protection from falling objects as necessary by the operating conditions. As approved by the Kentucky Occupational Safety and Health Standards Board.

MARK S. BROWN, Chairman

APPROVED BY AGENCY: May 8, 2012

FILED WITH LRC: May 11, 2012 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 22, 2012 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 July 2, 2012. 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 updates 29 C.F.R. 1910.176—1910.184 to July 1, 2011 and establishes the amendments to 29 C.F.R. 1910.177 as published in the December 27, 2011 Federal Register, Volume 76, Number 248. Section 3 is a state-specific standard pertaining to the use of personnel platforms on forklifts. The amendment to 1910.177 pertains to the updating of charts and posters for the servicing of multi-piece and single-piece rim wheels. This material will now be available from OSHA in booklet form with updated information from many sources. This amendment will not reduce the employee protections put into place by the standards OSHA is updating under this rulemaking. In fact, this rulemaking likely will enhance employee safety by simplifying compliance with the standard, and will reduce tire-servicing accidents because of the updated information. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA.

(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: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 updates the C.F.R. to July 1, 2011 and establishes the amendments to 29 C.F.R. 1910.177 published in the December 27, 2011 Federal Register, Volume 76, Number 248.

(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**.** 29 C.F.R. 1953.5 requires state implementation of a new federal standard, or a more stringent amendment, within six (6) months of the promulgation date of the final rule. However, this is a technical amendment and state adoption is not required. Nevertheless, in order to remain consistent with the federal standards, this amendment to 803 KAR 2:313 was adopted by the Kentucky OSH Standards Board at its meeting on May 8, 2012.

(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 requirement, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all private and public sector employers in the Commonwealth engaged in general industry activities covered by KRS Chapter 338.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment does not add occupational safety and health requirements to the employer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Because the amendment requires no new occupational safety and health requirements, no costs are expected to be associated with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): OSHA states that workers provided the necessary hazard information will more fully participate in, and support, the protective measures instituted in their workplaces.

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

(a) Initially: There will be no cost to implement this regulation.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement this revision.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This ordinary administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.
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. 29 C.F.R. 1953.5 requires state implementation of a new federal standard, or a more stringent amendment, within six (6) months of the confirmation of the effective date of the final rule. However, this is a technical amendment that does not require state adoption. Nevertheless, this amendment was adopted by the Kentucky Occupational Safety and Health Standards Board at its May 8, 2012 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. OSHA's amendment to 1910.177 is not required to be adopted by Kentucky. Nevertheless, since there is not an effective alternative, and to maintain consistency with the OSHA standards, it was adopted by the Kentucky Occupational Safety and Health Standards Board at its May 8, 2012 meeting.

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 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? This amendment will not impose any cost to the employer.

(d) How much will it cost to administer this program for subsequent years? This amendment will not impose any cost to the employer. 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 2:316. Welding, cutting, and brazing.

RELATES TO: KRS 338.051(3), 338.061, 29 C.F.R. 1910.251 -1910.255

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations necessary to accomplish the purposes of KRS Chapter 338. 29 C.F.R. 1910.251 to 1910.255 establishes the federal requirements relating to welding, cutting, and brazing. This administrative regulation establishes the welding, cutting, and brazing standards to be enforced by the Department of Workplace Standards in general industry.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means Secretary, Labor Cabinet or Commissioner, Department of Workplace Standards, Labor Cabinet.

(3) "C.F.R." means Code of Federal Regulations.

(4) "Employee" is defined in KRS 338.015(2).

(5) "Employer" is defined in KRS 338.015(1).

(6) "Standard" is defined in KRS 338.015(3).

(7) "U.S. Department of Labor" means Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601, or the U.S. Department of Labor.

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, general industry shall comply with the following federal requirements published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. 1910.251-1910.255, revised July 1, 2011; and

(2) The revisions to 29 C.F.R. 1910.252 as published in the March 26, 2012 Federal Register, Volume 77, Number 58.[~~2009; and (2) The revisions to 29 C.F.R. 1910.252 as published in September 9, 2009 Federal Register, Volume 74, Number 173.~~]

As approved by the Kentucky Occupational Safety and Health Standards Board.

MARK S. BROWN, Chairman

APPROVED BY AGENCY: May 8, 2012

FILED WITH LRC: May 11, 2012 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 22, 2012 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 July 2, 2012. 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 2011 and establishes the amendments to 29 C.F.R. 1910.252 published in the March 26, 2012 Federal Register, Volume 77, Number 58. As a result of the adoption of this final rule 803 KAR 2:316 must be amended to include the adopted changes. With the March 26, 2012 final rule OSHA is amending the hazard communication standard and other affected regulations to conform to the Globally Harmonized System of Classification and Labelling of Chemicals (GHS) as established by the United Nations (UN). The amendments are consistent with Executive Order 13563 requiring the assessment, modification, and improvement of existing rules. In 2002, the United Nations formally adopted the GHS with the goal of implementing the GHS internationally for consistency with chemical-related information. Since the GHS was adopted by the UN, several revisions have taken place. The amendments in the March 26, 2012 final rule are based on Revision 3 of the GHS. Because the provisions of the GHS will be continuously updated by the UN, OSHA will be reviewing the regulation and amending the requirements as needed to ensure consistency globally. In efforts to comport to the internationally mandated GHS, OSHA has made several modifications regarding classification and labeling of chemicals, most of which affect the hazard communication standard. The modifications to the hazard communication standard revise the criteria for classifying chemicals as well as the labeling requirements for those chemicals. Definitions in the hazard communication standard are being revised and a new format as well as new information for safety data sheets is required. Other standards are also affected by the changes to the hazard communication standard in order to bring consistency between those standards. The other standards affected include the flammable and combustible liquids regulations, process safety management, and most substance specific health regulations. The requirements related to classifying hazards experienced substantial changes with the identification of hazards by category. There are 10 health hazard and 16 physical hazard classifications under the new rule. Within those hazard classes, chemicals are then placed into a hazard category. For instance, flammable solids are a type of physical hazard. Category 1 flammable solids have a burning time less than five minutes and Category 2 flammable solids have a burning time greater than five minutes. The current hazard communication standard recognizes health and physical hazards but the number of hazard classes increases with this final rule. In addition to the expansion of physical and health hazards, OSHA has included a "hazards not otherwise classified" class with this final rule. Combustible dust falls within the "hazards not otherwise classified" class. Chemical hazard classification changes come with specific information and requirements manufacturers of chemicals must follow to determine the hazard classification. This provides consistency among all chemical manufacturers. As aforementioned, labels will also be changing with the implementation of this final rule. Presently labels are required to have the following information: the identity of the hazardous chemical, the appropriate hazard warning, and the name and address of the chemical manufacturer, importer or other responsible party. Labels required by this final rule will have the product name or identifier, pictogram for the hazard class, a signal word such as "Danger" or "Warning", a hazard statement such as "fatal if swallowed", precautionary information including first aid information, supplier information, and any supplemental information. Material safety data sheets under the present rule will now be termed safety data sheets under the new rule and will have sixteen different headings, four of which are not required under the current hazard communication rule. The four new headings are "ecological information," "dispersal considerations," "transport information," and "regulatory information." While all four headings are required by the GHS, the four headings are not within OSHA's jurisdiction. Training on the new requirements is mandated by the final rule. OSHA's date for training implementation is Dec. 1, 2013. Labels and safety data sheets must comply with the new requirements by June 1, 2015. Employers will be given until June 1, 2016 to update their hazard communication programs or any other workplace signs. The final rule amendment specific to this KAR, changes labeling requirements for welding materials. 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 March 26, 2012 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by September 26, 2012. The amendments to 803 KAR 2:316, related to the March 26, 2012 Federal Register final rule were adopted by the Kentucky OSH Standards Board on May 08, 2012.

(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 2011 and establishes the amendments to 29 C.F.R. 1910.252 published in the March 26, 2012 Federal Register, Volume 77, Number 58. The amendments revise a welding, cutting, and brazing regulation to provide consistency with the definitions and labeling requirements associated with the GHS related changes to the hazard communication standard. 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 March 26, 2012 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by September 26, 2012. The amendments to 803 KAR 2:316, related to the March 26, 2012 Federal Register final rule were adopted by the Kentucky OSH Standards Board on May 08, 2012.

(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: The March 26, 2012 final rule will require employers to adjust labels of welding materials to maintain consistency with the GHS related changes to the hazard communication standard.

(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 compliance with the entire March 26, 2012 final rule will have a total annualized cost of $201 million. The major cost elements will include the classification of the chemical hazards and the revision of material safety data sheets. OSHA expects the net benefits of the final rule to reach $556 million annually. Compliance costs specific to this state were not available.

(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 specific 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 March 26, 2012 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by September 26, 2012. The amendments to 803 KAR 2:316, related to the March 26, 2012 Federal Register final rule were adopted by the Kentucky OSH Standards Board on May 08, 2012.

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 March 26, 2012 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by September 26, 2012. The amendments to 803 KAR 2:316, related to the March 26, 2012 Federal Register final rule were adopted by the Kentucky OSH Standards Board on May 08, 2012.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? 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. The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

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 provides that compliance with the entire March 26, 2012 final rule will have a total annualized cost of $201 million. The major cost elements will include the classification of the chemical hazards and the revision of material safety data sheets. OSHA expects the net benefits of the final rule to reach $556 million annually. Compliance costs specific to this state were not available.

(d) How much will it cost to administer this program for subsequent years? OSHA provides that compliance with the entire March 26, 2012 final rule will have a total annualized cost of $201 million for the more than 6 million employers expected to be affected by this rule. No information was available specific to this state.

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: OSHA provides that compliance with the entire March 26, 2012 final rule will have a total annualized cost of $201 million. OSHA expects the net benefits of the final rule to reach $556 million annually. No information was available specific to this state.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health
Education and Training
(Amendment)

803 KAR 2:317. Special industries.

RELATES TO: KRS 338.051(3), 338.061, 29 C.F.R. 1910.261-1910.272

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. 1910.261 to 1910.272 establish the federal requirements relating to special industries.[~~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 special industries standards to be enforced by the Department of Workplace Standards in general industry.

Section 1. Definitions. (1) "Assistant Secretary" means Secretary, Labor Cabinet or Commissioner, Department of Workplace Standards, Labor Cabinet.

(2) "C.F.R." means Code of Federal Regulations.
(3) "Employee" is defined in KRS 338.015(2).
(4) "Standard" is defined in KRS 338.015(3).

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, general industry shall comply with the following federal requirements published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. 1910.261-1910.272, revised July 1, 2011;[~~2008.~~] and

(2) The amendments to 29 C.F.R. 1910, Subpart R—Special Industries, as published in the December 27, 2011 Federal Register, Volume 76, Number 248.

MARK S. BROWN, Chairman
APPROVED BY AGENCY: May 8, 2012
FILED WITH LRC: May 11, 2012 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 22, 2012 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 July 2, 2012. 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 updates 29 C.F.R. 1910.261 through 1910.272 to July 1, 2011 and establishes the amendments to 29 C.F.R. 1910, Subpart R—Special Industries, as published in the December 27, 2011 Federal Register, Volume 76, Number 248. These amendments include correcting errors involving incorrect cross references in 1910.261, adding a cross reference to a compliance directive in 1910.272, and correcting a typographical error in a cross reference in 1910.265. This amendment will not reduce the employee protections put into place by the standards OSHA is updating under this rulemaking. In fact, this rulemaking likely will enhance employee safety by simplifying and correcting the standard. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA.

(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: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 updates the C.F.R. to July 1, 2011 and establishes the amendments to 29 C.F.R. 1910.261-1910.272, which is Subpart R—Special Industries, as published in the December 27, 2011 Federal Register, Volume 76, Number 248.

(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**.** 29 C.F.R. 1953.5 requires state implementation of a new federal standard, or a more stringent amendment, within six (6) months of the promulgation date of the final rule. However, this is a technical amendment and state adoption is not required. Nevertheless, in order to remain consistent with the federal standards, this amendment to 803 KAR 2:317 was adopted by the Kentucky OSH Standards Board at its meeting on May 8, 2012.

(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 requirement, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all private and public sector employers in the Commonwealth engaged in general industry activities covered by KRS Chapter 338.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment does not add occupational safety and health requirements to the employer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Because the amendment requires no new occupational safety and health requirements, no costs are expected to be associated with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): OSHA states that workers provided the necessary hazard information will more fully participate in, and support, the protective measures instituted in their workplaces.

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

(a) Initially: There will be no cost to implement this regulation.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement this revision.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This ordinary administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 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. 29 C.F.R. 1953.5 re-

quires state implementation of a new federal standard, or a more stringent amendment, within six (6) months of the confirmation of the effective date of the final rule. However, this is a technical amendment that does not require state adoption. Nevertheless, this amendment was adopted by the Kentucky Occupational Safety and Health Standards Board at its May 8, 2012 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. OSHA's amendment to C.F.R. 1910, Subpart R, is not required to be adopted by Kentucky. Nevertheless, since there is not an effective alternative, and to maintain consistency with the OSHA standards, it was adopted by the Kentucky Occupational Safety and Health Standards Board at its May 8, 2012 meeting.

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 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? This amendment will not impose any cost to the employer.

(d) How much will it cost to administer this program for subsequent years? This amendment will not impose any cost to the employer.

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, 2011[~~2010~~]; and

(2) The amendments to 29 C.F.R. 1910.440 as published in the December 27, 2011 Federal Register, Volume 76, Number 248.[~~(2) The amendments to 29 C.F.R. 1910.440 as published in the June 8, 2011, Federal Register, Volume 76, Number 110.~~]

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, 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: May 8, 2012

FILED WITH LRC: May 11, 2012 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 22, 2012 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 July 2, 2012. 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 updates 29 C.F.R. 1910.401—1910.440 to July 1, 2011 and establishes the amendments to 29 C.F.R. 1910.440 as published in the December 27, 2011 Federal Register, Volume 76, Number 248. Section 3 is a state-specific standard that states: 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, U.S. Highway 127 South, Suite 4, Frankfort, Kentucky 40601. The amendment to 1910.440 removes the record-transfer requirement from 1910.440(b)(4) making it consistent with prior action when this was also removed from 1910.440(b)(5). The new 1910.440(b)(4) now reads: The employer shall now comply with any additional requirements set forth at 29 C.F.R. 1910.1020. This amendment will not reduce the employee protections put into place by the standards OSHA is updating under this rulemaking. In fact, this rulemaking likely will enhance employee safety by simplifying compliance with the standard, and will reduce unnecessary paper work. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA.

(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: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 updates the C.F.R. to July 1, 2011 and establishes the amendments to 29 C.F.R. 1910.440 published in the December 27, 2011 Federal Register, Volume 76, Number 248.

(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**.** 29 C.F.R. 1953.5 requires state implementation of a new federal standard, or a more stringent amendment, within six (6) months of the promulgation date of the final rule. However, this is a technical amendment and state adoption is not required. Nevertheless, in order to remain consistent with the federal standards, this amendment to 803 KAR 2:319 was adopted by the Kentucky OSH Standards Board at its meeting on May 8, 2012.

(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 requirement, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all private and public sector employers in the Commonwealth engaged in general industry activities covered by KRS Chapter 338.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment does not add occupational safety and health requirements to the employer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Because the amendment requires no new occupational safety and health requirements, no costs are expected to be associated with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): OSHA states that workers provided the necessary hazard information will more fully participate in, and support, the protective measures instituted in their workplaces.

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

(a) Initially: There will be no cost to implement this regulation.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement this revision.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This ordinary administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 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. 29 C.F.R. 1953.5 requires state implementation of a new federal standard, or a more stringent amendment, within six (6) months of the confirmation of the effective date of the final rule. However, this is a technical amendment that does not require state adoption. Nevertheless, this amendment was adopted by the Kentucky Occupational Safety and Health Standards Board at its May 8, 2012 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. OSHA's amendment to 1910.440 is not required to be adopted by Kentucky. Nevertheless, since there is not an effective alternative, and to maintain consistency with the OSHA standards, it was adopted by the Kentucky Occupational Safety and Health Standards Board at its May 8, 2012 meeting.

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 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? This amendment will not impose any cost to the employer.

(d) How much will it cost to administer this program for subsequent years? This amendment will not impose any cost to the employer.

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 2:320. 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 trans-shipment in sealed containers, except for the labeling requirements under subsection (4)(b), (c), and (d) of this section.

(b) This section shall not apply to solid or liquid mixtures containing less than one and zero-tenths (1.0) percent by weight of 4,4'-Methylene bis (2-chloroaniline).

(2) Requirements for areas containing 4,4'-Methylene bis (2-chloroaniline). A regulated area shall be established by an employer where 4,4'-Methylene bis (2-chloroaniline) is manufactured, processed, used, repackaged, released, handled, and stored. Those areas shall be controlled in accordance with the requirements for the following category or categories describing the operations involved:

(a) Isolated systems. Employees working with 4,4'-Methylene bis (2-chloroaniline) within an isolated system such as a "glove box" shall wash their hands and arms upon completion of the assigned task and before engaging in other activities not associated with the isolated system.

(b) Closed system operation. Within regulated areas if 4,4'-Methylene bis (2-chloroaniline) is stored in a sealed container, or contained in a closed system including piping systems, with any sample ports or openings closed while 4,4'-Methylene bis (2-chloroaniline) is contained within:

1. Access shall be restricted to authorized employees only; and

2. Employees shall be required to wash hands, forearms, face, and neck upon each exit from the regulated areas, close to the point of exit and before engaging in other activities.

(c) Open vessel system operations. Open vessel system operations shall be prohibited.

(d) Transfer from a closed system, charging or discharging point operations, or otherwise opening a closed system. In operations involving a "laboratory type hood," or in locations where 4,4'-

Methylene bis (2-chloroaniline) is contained in an otherwise "closed system," but is transferred, charged, or discharged into other normally closed containers, the provisions of this paragraph shall apply.

1. Access shall be restricted to authorized employees only.

2. Each operation shall be provided with continuous local exhaust ventilation so that air movement shall always be from ordinary work areas to the operation.

a. Exhaust air shall not be discharged to regulated areas, nonregulated areas, or the external environment unless it is decontaminated.

b. Clean make-up air shall be introduced in sufficient volume to maintain the correct operation of the local exhaust system.

3. Employees shall be provided with, and required to wear, clean, full body protective clothing (smocks, coveralls, or long-sleeved shirt and pants), shoe covers, and gloves prior to entering the regulated area.

4. Employees engaged in 4,4'-Methylene bis (2-chloroaniline) handling operations shall be provided with and required to wear and use a half-face, filter-type respirator for dusts, mists, and fumes, in accordance with 29 C.F.R. 1910.134. A respirator affording a higher level of protection may be substituted.

5. Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for decontamination or disposal. The contents of the impervious containers shall be identified, as required under subsection (4)(b), (c), and (d) of this section.

6. Employees shall be required to wash hands, forearms, face, and neck on each exit from the regulated area, close to the point of exit, and before engaging in other activities.

7. Employees shall be required to shower after the last exit of the day.

8. Drinking fountains shall be prohibited in the regulated area.

(e) Maintenance and decontamination activities. In cleanup of leaks or spills, maintenance or repair operations on contaminated systems or equipment, or any operations involving work in an area where direct contact with 4,4'-Methylene bis (2-chloroaniline) could result, each authorized employee entering that area shall be:

1. Provided with and required to wear clean, impervious garments, including gloves, boots, and continuous-air supplied hood in accordance with 29 C.F.R. 1910.134;

2. Decontaminated before removing the protective garments and hood; and

3. Required to shower upon removing the protective garments and hood.

(f) Laboratory activities. The requirements of this paragraph shall apply to research and quality control activities involving the use of 4,4'-Methylene bis (2-chloroaniline).

1. Mechanical pipetting aids shall be used for all pipetting procedures.

2. Experiments, procedures, and equipment that could produce aerosols shall be confined to laboratory-type hoods or glove boxes.

3. Surfaces on which 4,4'-Methylene bis (2-chloroaniline) is handled shall be protected from contamination.

4.a. Contaminated wastes and animal carcasses shall be collected in impervious containers that are closed and decontaminated prior to removal from the work area.

b. The wastes and carcasses shall be incinerated so that no carcinogenic products are released.

5. All other forms of 4,4'-Methylene bis (2-chloroaniline) shall be inactivated prior to disposal.

6. Employees engaged in animal support activities shall be:

a. Provided with and required to wear, a complete protective clothing change, clean each day, including coveralls or pants and shirt, foot covers, head covers, gloves, and appropriate respiratory protective equipment or devices;

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 labeling. Containers of 4,4'-Methylene bis (2-chloroaniline) shall be labeled in accordance with the requirements of 29 C.F.R. 1910.1200.[~~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 manufac-

tured, processed, used, repackaged, released, stored, or otherwise handled.

(b) Incidents. Incidents that result in the release of 4,4'-Methylene bis (2-chloroaniline) into any area where employees may be exposed shall be reported in accordance with this paragraph.

1. A report of the incident and the facts obtainable at that time, including a report on any medical treatment of affected employees, shall be made within twenty-four (24) hours to the nearest Area Director.

2. A written report shall be filed with the nearest Area Director within fifteen (15) calendar days of the initial report and shall include:

a. A specification of the amount of material released, the amount of time involved, and an explanation of the procedure used in determining this figure;

b. A description of the area involved, and the extent of known and possible employee and area contamination;

c. A report of any medical treatment of affected employees and any medical surveillance program implemented; and

d. An analysis of the steps to be taken, with specific completion dates, to avoid further similar release.

(6) Medical surveillance. At no cost to the employee, a program of medical surveillance shall be established and implemented for employees considered for assignment to enter regulated areas, and for authorized employees.

(a) Examinations.

1. Before an employee is assigned to enter a regulated area, a preassignment physical examination by a physician shall be provided. The examination shall include the personal history of the employee, family and occupational background, including genetic and environmental factors.

2. Authorized employees shall be provided with periodic physical examinations at least annually, following the preassignment examination.

3. In all physical examinations, the examining physician shall consider whether there exist conditions of increased risk, including reduced immunological competence, current treatment with steroids of cytotoxic agents, pregnancy, and cigarette smoking.

(b) Records.

1. Employers of employees examined pursuant to this subsection shall maintain complete and accurate records of all medical examinations. Records shall be maintained for the duration of the employee's employment. If the employee's employment is terminated, including by retirement or death, or if the employer ceases business without a successor; records, or notarized true copies thereof, shall be forwarded by registered mail to the director.

2. Records required by this paragraph shall be provided if requested by authorized representatives of the assistant secretary or the director. If requested by an employee or former employee, the records shall be provided to a physician designated by the employee or to a new employer.

3. Any physician who conducts a medical examination required by this subsection shall furnish to the employer a statement of the employee's suitability for employment in the specific exposure.

Section 3. Laboratory Activities. The requirements of this section shall apply to research and quality control activities involving the use of chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016. (1) Mechanical pipetting aids shall be used for all pipetting procedures.

(2) Experiments, procedures, and equipment which could produce aerosols shall be confined to laboratory-type hoods or glove boxes.

(3) Surfaces on which chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016 are handled shall be protected from contamination.

(4) Contaminated wastes and animal carcasses shall be collected in impervious containers that are closed and decontaminated prior to removal from the work area. The wastes and carcasses shall be incinerated so that carcinogenic products shall not be released.

(5) All other forms of chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016 shall be inactivated prior to disposal.

(6) Laboratory vacuum systems shall be protected with high-efficiency scrubbers or with disposal absolute filters.

(7) Employees engaged in animal support activities shall be:

(a) Provided with and required to wear, a complete protective clothing change, clean each day, including coveralls, or pants and shirt, foot covers, head covers, gloves, and appropriate respiratory protective equipment or devices;

(b)1. Prior to each exit from a regulated area, required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for decontamination or disposal; and

2. The contents of the impervious containers shall be identified as required under Section 2(4)(b), (c), and (d) of this administrative regulation; 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, 2011;

(2) The amendments to Subpart Z of 29 C.F.R. 1910 as published in the December 27, 2011 Federal Register, Volume 76, Number 248; and

(3) The amendments to Subpart Z of 29 C.F.R. 1910 as published in the March 26, 2012 Federal Register, Volume 77, Number 58.[~~2010; 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.~~]

MARK S. BROWN, Chairman

APPROVED BY AGENCY: May 8, 2012

FILED WITH LRC: May 11, 2012 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 22, 2012 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 July 2, 2012. 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, 2011 and establishes the amendments to Subpart Z of 29 C.F.R. 1910 published in the March 26, 2012 Federal Register, Volume 77, Number 58. Additionally, Section 6 establishes amendments to Subpart Z of 29 C.F.R. 1910 published in the December 27, 2011 Federal Register, Volume 76, Number 248. As a result of the adoption of these final rules 803 KAR 2:320 must be amended to include the adopted changes. With the March 26, 2012 final rule OSHA is amending the hazard communication standard and other affected regulations to conform to the Globally Harmonized System of Classification and Labelling of Chemicals (GHS) as established by the United Nations (UN). The amendments are consistent with Executive Order 13563 requiring the assessment, modification, and improvement of existing rules. In 2002, the United Nations formally adopted the GHS with the goal of implementing the GHS internationally for consistency with chemical-related information. Since the GHS was adopted by the UN, several revisions have taken place. The amendments in the March 26, 2012 final rule are based on Revision 3 of the GHS. Because the provisions of the GHS will be continuously updated by the UN, OSHA will be reviewing the regulation and amending the requirements as needed to ensure consistency globally. In efforts to comport to the internationally mandated GHS, OSHA has made several modifications regarding classification and labeling of chemicals, most of which affect the hazard communication standard. The modifications to the hazard communication standard revise the criteria for classifying chemicals as well as the labeling requirements for those chemicals. Definitions in the hazard communication standard are being revised and a new format as well as new information for safety data sheets is required. Other standards are also affected by the changes to the hazard communication standard in order to bring consistency between those standards. The other standards affected include the flammable and combustible liquids regulations, process safety management, and most substance specific health regulations. The requirements related to classifying hazards experienced substantial changes with the identification of hazards by category. There are 10 health hazard and 16 physical hazard classifications under the new rule. Within those hazard classes, chemicals are then placed into a hazard category. For instance, flammable solids are a type of physical hazard. Category 1 flammable solids have a burning time less than five minutes and Category 2 flammable solids have a burning time greater than five minutes. The current hazard communication standard recognizes health and physical hazards but the number of hazard classes increases with this final rule. In addition to the expansion of physical and health hazards, OSHA has included a "hazards not otherwise classified" class with this final rule. Combustible dust falls within the "hazards not otherwise classified" class. Chemical hazard classification changes come with specific information and requirements manufacturers of chemicals must follow to determine the hazard classification. This provides consistency among all chemical manufacturers. As aforementioned, labels will also be changing with the implementation of this final rule. Presently labels are required to have the following information: the identity of the hazardous chemical, the appropriate hazard warning, and the name and address of the chemical manufacturer, importer or other responsible party. Labels required by this final rule will have the product name or identifier, pictogram for the hazard class, a signal word such as "Danger" or "Warning", a hazard statement such as "fatal if swallowed", precautionary information including first aid information, supplier information, and any supplemental information. Material safety data sheets under the present rule will now be termed safety data sheets under the new rule and will have sixteen different headings, four of which are not required under the current hazard communication rule. The four new headings are "ecological information," "dispersal considerations," "transport information," and "regulatory information." While all four headings are required by the GHS, the four headings are not within OSHA's jurisdiction. Training on the new requirements is mandated by the final rule. OSHA's date for training implementation is Dec. 1, 2013. Labels and safety data sheets must comply with the new requirements by June 1, 2015. Employers will be given until June 1, 2016 to update their hazard communication programs or any other workplace signs. The final rule amendment specific to this KAR makes the aforementioned changes to 29 C.F.R. 1910.1200, which is the main standard affected by the GHS standardization. The state-specific requirement in Section 2 of this KAR is also being amended to maintain chemical labeling consistency with the hazard communication standard. The former container labeling requirements are

being replaced with a reference to follow the labeling requirements of 29 C.F.R. 1910.1200. With the December 27, 2011 final rule, OSHA is correcting typographical errors and making non-substantive technical amendments to a number of OSHA standards. These changes do not modify or establish new rights or obligations for employers or employees. The correction to this specific KAR amends incorrect cross reference information and amends inaccurate wording related to action levels. 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 March 26, 2012 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by September 26, 2012. The amendments related to the December 27, 2011 rule did not impose any additional or more stringent requirements on employers than the existing standard. The Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, the amendments to 803 KAR 2:320, related to the March 26, 2012 Federal Register final rule and the December 27, 2011 were all adopted by the Kentucky OSH Standards Board on May 08, 2012.

(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 updates the C.F.R. to July 1, 2011 and establishes the amendments to Subpart Z of 29 C.F.R. 1910 published in the March 26, 2012 Federal Register, Volume 77, Number 58. Additionally, Section 6 establishes amendments to Subpart Z of 29 C.F.R. 1910 published in the December 27, 2011 Federal Register, Volume 76, Number 248. Section 2, a state-specific requirement related to 4,4'-Methylene bis (2-Chloroaniline) is also being amended to bring consistency with the chemical labeling requirements in the March 26, 2012 Federal Register. As a result of the adoption of these final rules 803 KAR 2:320 must be amended to include the adopted changes. The specific amendments to this KAR revise a number of federal regulations to provide consistency with the definitions, labeling, and safety data sheet requirements associated with the GHS related changes to the hazard communication standard. A state-specific regulation related to the chemical 4,4'-Methylene bis (2-Chloroaniline) is also being amended to bring consistency and effectiveness to the labeling requirements between the federal and Kentucky OSH regulations. Amendments to the regulation prompted by the December 27, 2011 final rule will be technical and non-substantive in nature. 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 March 26, 2012 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by September 26, 2012. The amendments related to the December 27, 2011 rule did not impose any additional or more stringent requirements on employers than the existing standard. The Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, the amendments to 803 KAR 2:320, related to the March 26, 2012 Federal Register final rule and the December 27, 2011 were all adopted by the Kentucky OSH Standards Board on May 08, 2012.

(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: The December 27, 2011 will not impact business by this amendment. The March 26, 2012 final rule related to the GHS will require employers to adjust to the new definitions, new hazard classification, new labeling and safety data sheet revisions to hazard communication standard. Changes to the labeling requirements in Subpart Z will provide consistency between the hazard communication and other chemical related regulations.

(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 compliance with the entire March 26, 2012 final rule will have a total annualized cost of $201 million. The major cost elements will include the classification of the chemical hazards and the revision of material safety data sheets. OSHA expects the net benefits of the final rule to reach $556 million annually. Compliance costs specific to this state were not available. There are no expected costs associated with the December 27, 2011 rule correcting non-substantive errors in the regulations.

(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 specific 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 March 26, 2012 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain

its state program as effective as the federal program, Kentucky must incorporate the federal requirements by September 26, 2012. The amendments related to the December 27, 2011 rule did not impose any additional or more stringent requirements on employers than the existing standard. The Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, the amendments to 803 KAR 2:320, related to the March 26, 2012 Federal Register final rule and the December 27, 2011 were all adopted by the Kentucky OSH Standards Board on May 08, 2012.

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 March 26, 2012 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by September 26, 2012. The amendments related to the December 27, 2011 rule did not impose any additional or more stringent requirements on employers than the existing standard. The Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, the amendments to 803 KAR 2:500, related to the March 26, 2012 Federal Register final rule and the December 27, 2011 were all adopted by the Kentucky OSH Standards Board on May 08, 2012.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? 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. The amendments to the regulation do 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 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. The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

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 provides that compliance with the entire March 26, 2012 final rule will have a total annualized cost of $201 million. The major cost elements will include the classification of the chemical hazards and the revision of material safety data sheets. OSHA expects the net benefits of the final rule to reach $556 million annually. The specific amendment to this regulation is not expected to create any additional costs to the entities. Compliance costs specific to this state were not available. There are no expected costs associated with the December 27, 2011 rule correcting non-substantive errors in the regulations

(d) How much will it cost to administer this program for subsequent years? OSHA provides that compliance with the entire March 26, 2012 final rule will have a total annualized cost of $201 million. The major cost elements will include the classification of the chemical hazards and the revision of material safety data sheets. OSHA expects the net benefits of the final rule to reach $556 million annually. Compliance costs specific to this state were not available.

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 compliance with the entire March 26, 2012 final rule will have a total annualized cost of $201 million. OSHA expects the net benefits of the final rule to reach $556 million annually. No information was available specific to this state. There are no expected costs associated with the December 27, 2011 rule providing technical or non-substantive amendments within a number of regulations.

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, 2011;

(2) The amendments to Subpart D of 29 C.F.R. 926 as published in the March 26, 2012 Federal Register, Volume 77, Number 58; and

(3) The amendments to Subpart D of 29 C.F.R. 1926 as published in the December 27, 2011 Federal Register, Volume 76, Number 248.[~~2010.~~

~~(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.~~]

MARK S. BROWN, Chairman

APPROVED BY AGENCY: May 8, 2012

FILED WITH LRC: May 11, 2012 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 22, 2012 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 July 2, 2012. 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 29 C.F.R. 1926.50 through 1926.66. Section 2 also updates the C.F.R. to July 2011 and establishes the amendments to Subpart D of 29 C.F.R. 1926 published in the March 26, 2012 Federal Register, Volume 77, Number 58 and the amendments to Subpart D of 29 C.F.R. 1926 as published in the December 27, 2011 Federal Register, Volume 76, Number 248. As a result of the adoption of these final rules 803 KAR 2:403 must be amended to include the adopted changes. With the March 26, 2012 final rule OSHA is amending the hazard communication standard and other affected regulations to conform to the Globally Harmonized System of Classification and Labelling of Chemicals (GHS) as established by the United Nations (UN). The amendments are consistent with Executive Order 13563 requiring the assessment, modification, and improvement of existing rules. In 2002, the United Nations formally adopted the GHS with the goal of implementing the GHS internationally for consistency with chemical-related information. Since the GHS was adopted by the UN, several revisions have taken place. The amendments in the March 26, 2012 final rule are based on Revision 3 of the GHS. Because the provisions of the GHS will be continuously updated by the UN, OSHA will be reviewing the regulation and amending the requirements as needed to ensure consistency globally. In efforts to comport to the internationally mandated GHS, OSHA has made several modifications regarding classification and labeling of chemicals, most of which affect the hazard communication standard. The modifications to the hazard communication standard revise the criteria for classifying chemicals as well as the labeling requirements for those chemicals. Definitions in the hazard communication standard are being revised and a new format as well as new information for safety data sheets is required. Other standards are also affected by the changes to the hazard communication standard in order to bring consistency between those standards. The other standards affected include the flammable and combustible liquids regulations, process safety management, and most substance specific health regulations. The requirements related to classifying hazards experienced substantial changes with the identification of hazards by category. There are 10 health hazard and 16 physical hazard classifications under the new rule. Within those hazard classes, chemicals are then placed into a hazard category. For instance, flammable solids are a type of physical hazard. Category 1 flammable solids have a burning time less than five minutes and Category 2 flammable solids have a burning time greater than five minutes. The current hazard communication standard recognizes health and physical hazards but the number of hazard classes increases with this final rule. In addition to the expansion of physical and health hazards, OSHA has included a "hazards not otherwise classified" class with this final rule. Combustible dust falls within the "hazards not otherwise classified" class. Chemical hazard classification changes come with specific information and requirements manufacturers of chemicals must follow to determine the hazard classification. This provides consistency among all chemical manufacturers. As aforementioned, labels will also be changing with the implementation of this final rule. Presently labels are required to have the following information: the identity of the hazardous chemical, the appropriate hazard warning, and the name and address of the chemical manufacturer, importer or other responsible party. Labels required by this final rule will have the product name or identifier, pictogram for the hazard class, a signal word such as "Danger" or "Warning", a hazard statement such as "fatal if swallowed", precautionary information including first aid information, supplier information, and any supplemental information. Material safety data sheets under the present rule will now be termed safety data sheets under the new rule and will have sixteen different headings, four of which are not required under the current hazard communication rule. The four new headings are "ecological information," "dispersal considerations," "transport information," and "regulatory information." While all four headings are required by the GHS, the four headings are not within OSHA's jurisdiction. Training on the new requirements is mandated by the final rule. OSHA's date for training implementation is Dec. 1, 2013. Labels and safety data sheets must comply with the new requirements by June 1, 2015. Employers will be given until June 1, 2016 to update their hazard communication programs or any other workplace signs. The final rule amendment specific to this KAR, changes the labeling and sign requirements of several chemical specific standards in the construction industry in order to maintain consistency with the changes to the hazard communication standard. With the December 27, 2011 final rule, OSHA is correcting typographical errors and making non-substantive technical amendments to OSHA's lead and first aid construction regulations. These changes do not modify or established new rights or obligations for employers or employees. 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 March 26, 2012 final rule. Kentucky does not have an effective alternative to the

final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by September 26, 2012. The amendments related to the December 27, 2011 rule did not impose any additional or more stringent requirements on employers than the existing standard. The Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, the amendments to 803 KAR 2:403, related to the March 26, 2012 Federal Register final rule and the December 27, 2011 were all adopted by the Kentucky OSH Standards Board on May 08, 2012.

(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 2011 and establishes the amendments to Subpart D of 29 C.F.R. 1926 published in the March 26, 2012 Federal Register, Volume 77, Number 58 and the amendments to Subpart D 29 C.F.R. 1926 as published in the December 27, 2011 Federal Register, Volume 76, Number 248. The amendments also revise construction industry regulations to provide consistency with the definitions and labeling requirements associated with the GHS related changes to the hazard communication standard. The amendments also revise non-substantive errors in a non-mandatory Appendix as well as an error in the lead standard related to the action level. 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 March 26, 2012 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by September 26, 2012. The amendments related to the December 27, 2011 rule did not impose any additional or more stringent requirements on employers than the existing standard. The Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, the amendments to 803 KAR 2:403, related to the March 26, 2012 Federal Register final rule and the December 27, 2011 were all adopted by the Kentucky OSH Standards Board on May 08, 2012.

(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 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 December 27, 2011 final rule will not impact business with this amendment. The March 26, 2012 final rule related to the GHS will require employers to adjust to the new definitions and revisions to hazard communication standard. Changes to the chemical labeling requirements in 29 C.F.R. 1926 will provide consistency between the hazard communication and construction regulations.

(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 compliance with the entire March 26, 2012 final rule will have a total annualized cost of $201 million. The major cost elements will include the classification of the chemical hazards and the revision of material safety data sheets. OSHA expects the net benefits of the final rule to reach $556 million annually. Compliance costs specific to this state were not available. There are no expected costs associated with the December 27, 2011 rule correcting non-substantive errors in the regulations.

(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 specific 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 March 26, 2012 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by September 26, 2012. The amendments related to the December 27, 2011 rule did not impose any additional or more stringent requirements on employers than the existing standard. The Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, the amendments to 803 KAR 2:403, related to the March 26, 2012 Federal Register final rule and the December 27, 2011 were all adopted by the Kentucky OSH Standards Board on May 08, 2012.

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 March 26, 2012 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by September 26, 2012. The amendments related to the December 27, 2011 rule did not impose any additional or more stringent requirements on employers than

the existing standard. The Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, the amendments to 803 KAR 2:403, related to the March 26, 2012 Federal Register final rule and the December 27, 2011 were all adopted by the Kentucky OSH Standards Board on May 08, 2012.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendments to the regulation do 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. The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

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? OSHA provides that compliance with the entire March 26, 2012 final rule will have a total annualized cost of $201 million. The major cost elements will include the classification of the chemical hazards and the revision of material safety data sheets. OSHA expects the net benefits of the final rule to reach $556 million annually. Compliance costs specific to this state were not available. There are no expected costs associated with the December 27, 2011 rule correcting non-substantive errors in the regulations

(d) How much will it cost to administer this program for subsequent years? OSHA provides that compliance with the entire March 26, 2012 final rule will have a total annualized cost of $201 million. The major cost elements will include the classification of the chemical hazards and the revision of material safety data sheets. OSHA expects the net benefits of the final rule to reach $556 million annually. Compliance costs specific to this state were not available.

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 compliance with the entire March 26, 2012 final rule will have a total annualized cost of $201 million. OSHA expects the net benefits of the final rule to reach $556 million annually. No information was available specific to this state. There are no expected costs associated with the December 27, 2011 rule providing technical amendments within a number of regulations.

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 2:405. Fire protection and prevention.

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. 1926

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 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.

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. 1926.150 through 1926.159, revised July 1, 2011; and

(2) The amendments to Subpart F of 29 C.F.R. 1926 as published in the March 26, 2012 Federal Register, Volume 77, Number 58.[~~Section 1. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) 29 C.F.R. Part 1926.150 - 1926.159 of the Code of Federal Regulations, revised as of July 1, 1997, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.~~

~~(b) The revisions to 29 C.F.R. 1926.152, "Flammable and Combustible Liquids", as published in the Federal Register, Volume 63, Number 117, June 18, 1998, are incorporated by reference.~~

~~(2) This material may be inspected and copied at: Kentucky Labor Cabinet, Division of Occupational Safety and Health Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.~~]

MARK S. BROWN, Chairman

APPROVED BY AGENCY: May 8, 2012

FILED WITH LRC: May 11, 2012 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 22, 2012 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 July 2, 2012. 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. 1926. Section 2 also updates the C.F.R. to July 2011 and establishes the amendments to Subpart F of 1926 published in the March 26, 2012 Federal Register, Volume 77, Number 58. As a result of the adoption of this final rule 803 KAR 2:405 must be amended to include the adopted changes. With the March 26, 2012 final rule OSHA is amending the hazard communication standard and other affected regulations to conform to the Globally Harmonized System of Classification and Labelling of Chemicals (GHS) as established by the United Nations (UN). The amendments are consistent with Executive Order 13563 requiring the assessment, modification, and improvement of existing rules. In 2002, the United Nations formally adopted the GHS with the goal of implementing the GHS internationally for consistency with chemical-related information. Since the GHS was adopted by the UN, several revisions have taken place. The amendments in the March 26, 2012 final rule are based on Revision 3 of the GHS. Because the provisions of the GHS will be continuously updated by the UN, OSHA will be reviewing the regulation and amending the requirements as needed to ensure consistency globally. In efforts to comport to the internationally mandated GHS, OSHA has made several modifications regarding classification and labeling of chemicals, most of which affect the hazard communication standard. The modifications to the hazard communication standard revise the criteria for classifying chemicals as well as the labeling requirements for those chemicals. Definitions in the hazard communication standard are being revised and a new format as well as new information for safety data sheets is required. Other standards are also affected by the changes to the hazard communication standard in order to bring consistency between those standards. The other standards affected include the flammable and combustible liquids regulations, process safety management, and most substance specific health regulations. The requirements related to classifying hazards experienced substantial changes with the identification of hazards by category. There are 10 health hazard and 16 physical hazard classifications under the new rule. Within those hazard classes, chemicals are then placed into a hazard category. For instance, flammable solids are a type of physical hazard. Category 1 flammable solids have a burning time less than five minutes and Category 2 flammable solids have a burning time greater than five minutes. The current hazard communication standard recognizes health and physical hazards but the number of hazard classes increases with this final rule. In addition to the expansion of physical and health hazards, OSHA has included a "hazards not otherwise classified" class with this final rule. Combustible dust falls within the "hazards not otherwise classified" class. Chemical hazard classification changes come with specific information and requirements manufacturers of chemicals must follow to determine the hazard classification. This provides consistency among all chemical manufacturers. As aforementioned, labels will also be changing with the implementation of this final rule. Presently labels are required to have the following information: the identity of the hazardous chemical, the appropriate hazard warning, and the name and address of the chemical manufacturer, importer or other responsible party. Labels required by this final rule will have the product name or identifier, pictogram for the hazard class, a signal word such as "Danger" or "Warning", a hazard statement such as "fatal if swallowed", precautionary information including first aid information, supplier information, and any supplemental information. Material safety data sheets under the present rule will now be termed safety data sheets under the new rule and will have sixteen different headings, four of which are not required under the current hazard communication rule. The four new headings are "ecological information," "dispersal considerations," "transport information," and "regulatory information." While all four headings are required by the GHS, the four headings are not within OSHA's jurisdiction. Training on the new requirements is mandated by the final rule. OSHA's date for training implementation is Dec. 1, 2013. Labels and safety data sheets must comply with the new requirements by June 1, 2015. Employers will be given until June 1, 2016 to update their hazard communication programs or any other workplace signs. The final rule amendment specific to this KAR, changes terminology and definitions related to flammable and combustible liquids in the construction standard in order to provide consistency with the hazard communication standard. 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 March 26, 2012 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by September 26, 2012. The amendments to 803 KAR 2:405, related to the March 26, 2012 Federal Register final rule were adopted by the Kentucky OSH Standards Board on May 08, 2012.

(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 2011 and establishes the amendments to Subpart F of 29 C.F.R. 1926 published in the March 26, 2012 Federal Register, Volume 77, Number 58. The amendments revise definitions and terminology related to flammable and combustible liquids in order to provide consistency with the definitions and labeling requirements associated with the GHS related changes to the hazard communication standard. 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 March 26, 2012 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by September 26, 2012. The amendments to 803 KAR 2:405, related to the March 26, 2012 Federal Register final rule were adopted by the Kentucky OSH Standards Board on May 08, 2012.

(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 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 March 26, 2012 final rule will require employers to revise their classification of flammable and combustible liquids and to revise their scope in the regulations to maintain consistency with the GHS related changes to the hazard communication standard.

(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 compliance with the entire March 26, 2012 final rule will have a total annualized cost of $201 million. The major cost elements will include the classification of the chemical hazards and the revision of material safety data sheets. OSHA expects the net benefits of the final rule to reach $556 million annually. Compliance costs specific to this state were not available.

(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 specific 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 March 26, 2012 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by September 26, 2012. The amendments to 803 KAR 2:405, related to the March 26, 2012 Federal Register final rule were adopted by the Kentucky OSH Standards Board on May 08, 2012.

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 March 26, 2012 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by September 26, 2012. The amendments to 803 KAR 2:405, related to the March 26, 2012 Federal Register final rule were adopted by the Kentucky OSH Standards Board on May 08, 2012.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? 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. The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

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? OSHA provides that compliance with the entire March 26, 2012 final rule will have a total annualized cost of $201 million. The major cost elements will include the classification of the chemical hazards and the revision of material safety data sheets. OSHA expects the net benefits of the final rule to reach $556 million annually. Compliance costs specific to this state were not available.

(d) How much will it cost to administer this program for subsequent years? OSHA provides that compliance with the entire March 26, 2012 final rule will have a total annualized cost of $201 million for the more than 6 million employers expected to be affected by this rule. No information was available specific to this state.

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: OSHA provides that compliance with the entire March 26, 2012 final rule will have a total annualized cost of $201 million. OSHA expects the net benefits of the final rule to reach $556 million annually. No information was available specific to this state.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health
Education and Training
(Amendment)

803 KAR 2:407. 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 stand-

ards. The following administrative regulation contains those 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 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, 2011;[~~2010;~~] and

(2) The amendments to 29 C.F.R. 1926.251 as published in the April 18, 2012 Federal Register, Volume 76, Number 75.[~~(2) The amendments to 29 C.F.R. 1926.251 as published in the June 8, 2011 Federal Register, Volume 76, Number 110.]~~ As approved by the Kentucky Occupational Safety and Health Standards Board.

MARK S. BROWN, Chairman

APPROVED BY AGENCY: May 8, 2012

FILED WITH LRC: May 11, 2012 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 22, 2012 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 July 2, 2012. 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 updates 29 C.F.R. 1926.250—1926.252 to July 1, 2011 and establishes the amendments to 29 C.F.R. 1926.251 published in the April 18, 2011, Federal Register, Volume 77, Number 75. OSHA is correcting its sling standard for construction titled "Rigging Equipment for Material Handling" by removing the rated capacity tables and making minor, nonsubstantive revisions to the regulatory text. Several of the outdated tables have been removed and replaced by putting stronger emphasis on manufacturer's markings that must be located on or attached to each sling. This amendment will not reduce the employee protections put into place by the standards OSHA is updating under this rulemaking. In fact, this rulemaking likely will enhance employee safety by eliminating confusing requirements and clarifying employer obligations. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA.

(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: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 updates the C.F.R. to July 1, 2011 and establishes the amendments to 29 C.F.R. 1926.251 published in the April 18, 2011, Federal Register, Volume 77, Number 75.

(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**.** 29 C.F.R. 1953.5 requires state implementation of a new federal standard, or a more stringent amendment, within six (6) months of the promulgation date of the final rule. However, this is a technical amendment and state adoption is not required. Nevertheless, in order to remain consistent with the federal standards, this amendment to 803 KAR 2:309 was adopted by the Kentucky OSH Standards Board at its meeting on May 8, 2012.

(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 requirement, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all private and public sector employers in the Commonwealth engaged in construction industry activities covered by KRS Chapter 338.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment does not add occupational safety and health requirements to the employer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Because the amendment requires no new occupational safety and health requirements, no costs are expected to be associated with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): OSHA states that workers provided the necessary hazard information will more fully participate in, and support, the protective measures instituted in their workplaces.

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

(a) Initially: There will be no cost to implement this regulation.

(b) On a continuing basis: There will be no costs on a continu-

ing 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 ordinary administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 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. 29 C.F.R. 1953.5 requires state implementation of a new federal standard, or a more stringent amendment, within six (6) months of the confirmation of the effective date of the final rule. However, this is a technical amendment that does not require state adoption. Nevertheless, to remain consistent with OSHA regulations, this amendment was adopted by the Kentucky Occupational Safety and Health Standards Board at its May 8, 2012 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. OSHA's amendment to 1910.146 is not required to be adopted by Kentucky. Nevertheless, since there is not an effective alternative, it was adopted by the Kentucky Occupational Safety and Health Standards Board at its May 8, 2012 meeting.

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 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 to the employer.

(d) How much will it cost to administer this program for subsequent years? This amendment will not impose any cost to the employer. 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 2:425. 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. 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.[~~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, 2011; and

(2) The amendments to Subpart Z of 29 C.F.R. 1926 as published in the March 26, 2012 Federal Register, Volume 77, Number 58.[~~2010; 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.~~]

MARK S. BROWN, Chairman

APPROVED BY AGENCY: May 8, 2012

FILED WITH LRC: May 11, 2012 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 22, 2012 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 July 2, 2012. 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. 1926. Section 2 also updates the C.F.R. to July 2011 and establishes the amendments to Subpart Z of 1926 published in the March 26, 2012 Federal Register, Volume 77, Number 58. As a result of the adoption of this final rule 803 KAR 2:425 must be amended to include the adopted changes. With the March 26, 2012 final rule OSHA is amending the hazard communication standard and other affected regulations to conform to the Globally Harmonized System of Classification and Labelling of Chemicals (GHS) as established by the United Nations (UN). The amendments are consistent with Executive Order 13563 requiring the assessment, modification, and improvement of existing rules. In 2002, the United Nations formally adopted the GHS with the goal of implementing the GHS internationally for consistency with chemical-related information. Since the GHS was adopted by the UN, several revisions have taken place. The amendments in the March 26, 2012 final rule are based on Revision 3 of the GHS. Because the provisions of the GHS will be continuously updated by the UN, OSHA will be reviewing the regulation and amending the requirements as needed to ensure consistency globally. In efforts to comport to the internationally mandated GHS, OSHA has made several modifications regarding classification and labeling of chemicals, most of which affect the hazard communication standard. The modifications to the hazard communication standard revise the criteria for classifying chemicals as well as the labeling requirements for those chemicals. Definitions in the hazard communication standard are being revised and a new format as well as new information for safety data sheets is required. Other standards are also affected by the changes to the hazard communication standard in order to bring consistency between those standards. The other standards affected include the flammable and combustible liquids regulations, process safety management, and most substance specific health regulations. The requirements related to classifying hazards experienced substantial changes with the identification of hazards by category. There are 10 health hazard and 16 physical hazard classifications under the new rule. Within those hazard classes, chemicals are then placed into a hazard category. For instance, flammable solids are a type of physical hazard. Category 1 flammable solids have a burning time less than five minutes and Category 2 flammable solids have a burning time greater than five minutes. The current hazard communication standard recognizes health and physical hazards but the number of hazard classes increases with this final rule. In addition to the expansion of physical and health hazards, OSHA has included a "hazards not otherwise classified" class with this final rule. Combustible dust falls within the "hazards not otherwise classified" class. Chemical hazard classification changes come with specific information and requirements manufacturers of chemicals must follow to determine the hazard classification. This provides consistency among all chemical manufacturers. As aforementioned, labels will also be changing with the implementation of this final rule. Presently labels are required to have the following information: the identity of the hazardous chemical, the appropriate hazard warning, and the name and address of the chemical manufacturer, importer or other responsible party. Labels required by this final rule will have the product name or identifier, pictogram for the hazard class, a signal word such as "Danger" or "Warning", a hazard statement such as "fatal if swallowed", precautionary information including first aid information, supplier information, and any supplemental information. Material safety data sheets under the present rule will now be termed safety data sheets under the new rule and will have sixteen different headings, four of which are not required under the current hazard communication rule. The four new headings are "ecological information," "dispersal considerations," "transport information," and "regulatory information." While all four headings are required by the GHS, the four headings are not within OSHA's jurisdiction. Training on the new requirements is mandated by the final rule. OSHA's date for training implementation is Dec. 1, 2013. Labels and safety data sheets must comply with the new requirements by June 1, 2015. Employers will be given until June 1, 2016 to update their hazard communication programs or any other workplace signs. The final rule amendment specific to this KAR changes chemical labeling requirements for chemical specific construction standards in order to provide consistency between those regulations and the GHS requirements. 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 March 26, 2012 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by September 26, 2012. The amendments to 803 KAR 2:425, related to the March 26, 2012 Federal Register final rule were adopted by the Kentucky OSH Standards Board on May 08, 2012.

(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 2011 and establishes the amendments to Subpart Z of 29 C.F.R. 926 published in the March 26, 2012 Federal Register, Volume 77, Number 58. The amendments revise chemical specific labeling requirements in order to provide consistency with the definitions and labeling requirements associated with the GHS related changes to the hazard communication standard. 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 March 26, 2012 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by September 26, 2012. The amendments to 803 KAR 2:425, related to the March 26, 2012 Federal Register final rule were adopted by the Kentucky OSH Standards Board on May 08, 2012.

(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 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 March 26, 2012 final rule will require employers to revise chemical specific labels and signs to maintain consistency with the GHS related changes to the hazard communication standard.

(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 compliance with the entire March 26, 2012 final rule will have a total annualized cost of $201 million. The major cost elements will include the classification of the chemical hazards and the revision of material safety data sheets. OSHA expects the net benefits of the final rule to reach $556 million annually. Compliance costs specific to this state were not available.

(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 specific 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 March 26, 2012 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by September 26, 2012. The amendments to 803 KAR 2:425, related to the March 26, 2012 Federal Register final rule were adopted by the Kentucky OSH Standards Board on May 08, 2012.

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 March 26, 2012 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by September 26, 2012. The amendments to 803 KAR 2:425, related to the March 26, 2012 Federal Register final rule were adopted by the Kentucky OSH Standards Board on May 08, 2012.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? 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. The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

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? OSHA provides that compliance with the entire March 26, 2012 final rule will have a total annualized cost of $201 million. The major cost elements will include the classification of the chemical hazards and the revision of material safety data sheets. OSHA expects the net benefits of the final rule to reach $556 million annually. Compliance costs specific to this state were not available.

(d) How much will it cost to administer this program for subsequent years? OSHA provides that compliance with the entire March 26, 2012 final rule will have a total annualized cost of $201 million for the more than 6 million employers expected to be affected by this rule. No information was available specific to this state.

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: OSHA provides that compliance with the entire March 26, 2012 final rule will have a total annualized cost of $201 million. OSHA expects the net benefits of the final rule to reach $556 million annually. No information was available specific to this state.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health
Education and Training
(Amendment)

803 KAR 2:500. Maritime employment.

RELATES TO: KRS 338.015, 29 C.F.R. 1915, 1917, 1918, 1919

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 Department of Workplace Standards 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, 2011,[~~2010,~~] relating to occupational safety and health standards for shipyard employment;

(2) 29 C.F.R. Part 1917, revised July 1, 2011,[~~2010,~~] relating to maritime terminals;

(3) 29 C.F.R. Part 1918, revised July 1, 2011,[~~2010,~~] relating to safety and health regulations for longshoring;

(4) 29 C.F.R. Part 1919, revised July 1, 2011,[~~2010,~~] relating to gear certification;

(5) The revisions to 29 C.F.R. 1915.1000 published in the December 27, 2011 Federal Register, Volume 76, Number 248; and

(6) The revisions to 29 C.F.R. Part 1915 published in the March 26, 2012 Federal Register, Volume 77, Number 58.[~~The revisions to 29 C.F.R. Part 1915 published in the May 2, 2011, Federal Register, Volume 76, Number 84; 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.~~]

MARK S. BROWN, Chairman

APPROVED BY AGENCY: May 8, 2012

FILED WITH LRC: May 11, 2012 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 22, 2012 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 July 2, 2012. 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 2011 and establishes the amendments to 29 C.F.R. 1915 published in the March 26, 2012 Federal Register, Volume 77, Number 58 and the amendments to 29 C.F.R. 1915.1000 as published in the December 27, 2011 Federal Register, Volume 76, Number 248. As a result of the adoption of these final rules 803 KAR 2:500 must be amended to include the adopted changes. With the March 26, 2012 final rule OSHA is amending the hazard communication standard and other affected regulations to conform to the Globally Harmonized System of Classification and Labelling of Chemicals (GHS) as established by the United Nations (UN). The amendments are consistent with Executive Order 13563 requiring the assessment, modification, and improvement of existing rules. In 2002, the United Nations formally adopted the GHS with the goal of implementing the GHS internationally for consistency with chemical-related information. Since the GHS was adopted by the UN, several revisions have taken place. The amendments in the March 26, 2012 final rule are based on Revision 3 of the GHS. Because the provisions of the GHS will be continuously updated by the UN, OSHA will be reviewing the regulation and amending the requirements as needed to ensure consistency globally. In efforts to comport to the internationally mandated GHS, OSHA has made several modifications regarding classification and labeling of chemicals, most of which affect the hazard communication standard. The modifications to the hazard communication standard revise the criteria for classifying chemicals as well as the labeling requirements for those chemicals. Definitions in the hazard communication standard are being revised and a new format as well as new information for safety data sheets is required. Other standards are also affected by the changes to the hazard communication standard in order to bring consistency between those standards. The other standards affected include the flammable and combustible liquids regulations, process safety management, and most substance specific health regulations. The requirements related to classifying hazards experienced substantial changes with the identification of hazards by category. There are 10 health hazard and 16 physical hazard classifications under the new rule. Within those hazard classes, chemicals are then placed into a hazard category. For instance, flammable solids are a type of physical hazard. Category 1 flammable solids have a burning time less than five minutes and Category 2 flammable solids have a burning time greater than five minutes. The current hazard communication standard recognizes health and physical hazards but the number of hazard classes increases with this final rule. In addition to the expansion of physical and health hazards, OSHA has included a "hazards not otherwise classified" class with this final rule. Combustible dust falls within the "hazards not otherwise classified" class. Chemical hazard classification changes come with specific information and requirements manufacturers of chemicals must follow to determine the hazard classification. This provides consistency among all chemical manufacturers. As aforementioned, labels will also be changing with the implementation of this final rule. Presently labels are required to have the following information: the identity of the hazardous chemical, the appropriate hazard warning, and the name and address of the chemical manufacturer, importer or other responsible party. Labels required by this final rule will have the product name or identifier, pictogram for the hazard class, a signal word such as "Danger" or "Warning", a hazard statement such as "fatal if swallowed", precautionary information including first aid information, supplier information, and any supplemental information. Material safety data sheets under the present rule will now be termed safety data sheets under the new rule and will have sixteen different headings, four of which are not required under the current hazard communication rule. The four new headings are "ecological information," "dispersal considerations," "transport information," and "regulatory information." While all four headings are required by the GHS, the four headings are not within OSHA's jurisdiction. Training on the new requirements is mandated by the final rule. OSHA's date for training implementation is Dec. 1, 2013. Labels and safety data sheets must comply with the new requirements by June 1, 2015. Employers will be given until June 1, 2016 to update their hazard communication programs or any other workplace signs. The final rule amendment specific to this KAR, changes the labeling requirements of asbestos and lead in the maritime industry in order to maintain consistency with the changes to the hazard communication standard. With the December 27, 2011 final rule, OSHA is correcting typographical errors and making non-substantive technical amend-

ments to a number of OSHA standards. These changes do not modify or established new rights or obligations for employers or employees. The correction to this specific KAR amends typographical error an abbreviation for the term parts per million. 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 March 26, 2012 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by September 26, 2012. The amendments related to the December 27, 2011 rule did not impose any additional or more stringent requirements on employers than the existing standard. The Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, the amendments to 803 KAR 2:500, related to the March 26, 2012 Federal Register final rule and the December 27, 2011 were all adopted by the Kentucky OSH Standards Board on May 08, 2012.

(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 2011 and establishes the amendments to 29 C.F.R. 1915 published in the March 26, 2012 Federal Register, Volume 77, Number 58 and the amendments to 29 C.F.R. 1915.1000 as published in the December 27, 2011 Federal Register, Volume 76, Number 248. The amendments also revise maritime regulations to provide consistency with the definitions and labeling requirements associated with the GHS related changes to the hazard communication standard. The amendments also revise a typographical error in a maritime regulation. 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 March 26, 2012 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by September 26, 2012. The amendments related to the December 27, 2011 rule did not impose any additional or more stringent requirements on employers than the existing standard. The Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, the amendments to 803 KAR 2:500, related to the March 26, 2012 Federal Register final rule and the December 27, 2011 were all adopted by the Kentucky OSH Standards Board on May 08, 2012.

(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 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: The December 27, 2011 will not impact business by this amendment. The March 26, 2012 final rule related to the GHS will require employers to adjust to the new definitions and revisions to hazard communication standard. Changes to the labeling requirements in 29 C.F.R. 1915 will provide consistency between the hazard communication and maritime regulations.

(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 compliance with the entire March 26, 2012 final rule will have a total annualized cost of $201 million. The major cost elements will include the classification of the chemical hazards and the revision of material safety data sheets. OSHA expects the net benefits of the final rule to reach $556 million annually. The specific amendment to this regulation is not expected to create any additional costs to the entities. Compliance costs specific to this state were not available. There are no expected costs associated with the December 27, 2011 rule correcting nonsubstantive errors in the regulations.

(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 specific 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 March 26, 2012 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by September 26, 2012. The amendments related to the December 27, 2011 rule did not impose any additional or more stringent requirements on employers than the existing standard. The Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, the amendments to 803 KAR 2:500, related to the March 26, 2012 Federal Register final rule and the Decem-

ber 27, 2011 were all adopted by the Kentucky OSH Standards Board on May 08, 2012.

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 March 26, 2012 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by September 26, 2012. The amendments related to the December 27, 2011 rule did not impose any additional or more stringent requirements on employers than the existing standard. The Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, the amendments to 803 KAR 2:500, related to the March 26, 2012 Federal Register final rule and the December 27, 2011 were all adopted by the Kentucky OSH Standards Board on May 08, 2012.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendments to the regulation do 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. The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

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 provides that compliance with the entire March 26, 2012 final rule will have a total annualized cost of $201 million. The major cost elements will include the classification of the chemical hazards and the revision of material safety data sheets. OSHA expects the net benefits of the final rule to reach $556 million annually. Compliance costs specific to this state were not available. There are no expected costs associated with the December 27, 2011 rule correcting non-substantive errors in the regulations

(d) How much will it cost to administer this program for subsequent years? OSHA provides that compliance with the entire March 26, 2012 final rule will have a total annualized cost of $201 million. The major cost elements will include the classification of the chemical hazards and the revision of material safety data sheets. OSHA expects the net benefits of the final rule to reach $556 million annually. Compliance costs specific to this state were not available.

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 compliance with the entire March 26, 2012 final rule will have a total annualized cost of $201 million. OSHA expects the net benefits of the final rule to reach $556 million annually. No information was available specific to this state. There are no expected costs associated with the December 27, 2011 rule providing technical amendments within a number of regulations.

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(Amendment)

804 KAR 4:370. Entertainment destination center license.

RELATES TO: KRS 148.853(2)(b), 241.060(1), 243.030(41), (46), 243.040(18), 243.050(4), (5) [~~,243.030(41), 243.040(18)~~]

STATUTORY AUTHORITY: KRS 241.060(1), 243.030(46), 243.040(18)[~~, EO 2008-507~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 243.030(41) and (46) and 243.040(18) authorize the Alcoholic Beverage Control Board to issue an entertainment destination license and any other special licenses the board finds necessary for the proper regulation and control of traffic in alcoholic beverages.[~~EO 2008-507, effective June 16, 2008, abolished the Environmental and Public Protection Cabinet, and reorganized the Office of Alcohol Beverage Control as the Department of Alcohol Beverage Control and established the new Public Protection Cabinet.~~] This administrative regulation creates a special license to facilitate convention and tourism business in the Commonwealth by permitting the retail sale of alcoholic beverages by the drink at entertainment destination centers.

Section 1. Definitions. (1) "Entertainment destination center" means a facility:

(a)1. Located in a city of the first class or in a county containing a city of the first class;[~~or~~]

2. Located within an urban-county government under KRS Chapter 67A;

3. Located within a city of the second class and meeting the incentive qualifications for an entertainment destination center project as set forth in KRS 148.853(2)(b)(1); or

4. Located within a county containing a city of the second class and meeting the incentive qualifications for an entertainment destination center project as set forth in KRS 148.853(2)(b)(1);

(b) Containing a minimum of 100,000 square feet of building space located within 2,000 feet of:

1. An existing tourism attraction; or

2. A major convention facility measured from closest property line to closest property line; and

(c) Containing a combination of entertainment destination venues including:

1. Nightclubs;

2. Restaurants;

3. Leisure time activities; or

4. Specialty retail stores.

(2) "Major convention facility" means an establishment licensed under KRS 243.050(4) or[~~and~~] (5) as a convention center.

(3) "Physical confines of the center" means:

(a) A portion of a public thoroughfare that is:

1. Adjacent to or within the entertainment destination center; and

2. Closed to vehicular traffic;

(b) An[~~A~~] area designated by the lease as a common area; or

(c) An[~~A~~] area included in the leased space or common areas and defined by a physical barrier, which would preclude motor vehicle traffic and limit pedestrian accessibility, as approved by the Alcoholic Beverage Control Board.

Section 2. An entertainment destination center license shall authorize[~~authorizes~~] the licensee to sell alcoholic beverages by the drink at one (1) or more nonpermanent locations within common areas of the entertainment destination center over which the

licensee, by lease or ownership, has exclusive control.

Section 3. (1) Each lessee of premises located within an entertainment destination center that intends to sell alcoholic beverages by the drink at retail shall apply for and obtain the necessary on-premises licenses under KRS 243.030 and 243.040.

(2) If permitted by the owner or lessee of the entertainment destination center in the lease, a licensed retail drink licensee may also sell alcoholic beverages from one (1) nonpermanent facility if the facility is located 100 feet or less from the licensee's permanent premises.

(3) Each retail drink licensee shall obtain a supplemental bar license for the nonpermanent location.

Section 4.(1) On Thursday, Friday, and Saturday of each week, between the hours of 6 p.m. and up to 4 a.m., and during any other days and times as the owner or lessee of the entertainment destination center may determine and which are permitted by local ordinance and state statute, a licensee within the entertainment destination center may allow patrons to leave the individually licensed premises with an alcoholic beverage drink and enter other licensed premises and the common areas of the center, if adequate security is provided by the entertainment destination center licensee at each point of ingress and egress.

(2) Each licensee shall serve all alcoholic beverages in containers bearing the licensee's trademark, trade name, logo, or other identifying markings unique to that licensee.

(3) Each licensee, including the entertainment destination center licensee, shall prohibit patrons from taking alcoholic beverages outside the physical confines of the center.

(4) At times other than those specified in subsection (1) of this section, and in accordance with local ordinance and state statute, the entertainment destination center licensee may permit alcoholic beverages to be consumed in nonpermanent locations and common areas if it provides adequate security at each point of ingress and egress.

(5) During those times the entertainment destination center is operating pursuant to subsection (1) or (4) of this section, the entertainment destination center licensee shall ensure that minors can be easily distinguished from other patrons through use of identity bracelets, hand stamps, badges, or other visible means.

(6) Each licensee of the center shall cause to be posted signs indicating the hours and days when alcoholic beverages may be consumed in the common areas pursuant to subsection (1) of this section and times when that consumption is prohibited.

(7) The entertainment destination center licensee shall be solely responsible for notifying the department of the dates and times during which alcoholic beverages shall be sold in the nonpermanent retail locations and common areas pursuant to subsections (1) and (4) of this section.

Section 5. The holder of the entertainment destination center license shall be subject to the restrictions and prohibitions established in KRS Chapters 243 and 244.

Section 6.(1) The entertainment destination center license shall not be a quota license and shall not be transferable to any other premises.

(2) A licensee who obtains an alcoholic beverage license for permanent premises within the center shall not be prohibited from holding a retail drink quota license.

(3)(a) Except as provided in paragraph (b) of this subsection, a licensee in the center shall not hold a retail package alcoholic beverage license.

(b) A liquor package licensee with an existing contractual commitment may remain at its licensed premises after the entertainment destination center license is issued.

Section 7. (1) Except as provided in this administrative regulation, all statutes and administrative regulations governing the retail sale of alcoholic beverages by the drink and the consumption of alcohol by patrons shall be applicable to all retail establishments contained within the physical confines of the center.

(2)(a) A licensee shall be solely responsible for alcohol violations occurring on its licensed premises, including its nonpermanent location.

(b) The entertainment destination center licensee shall be solely responsible for alcohol violations occurring at its nonpermanent locations, kiosks, or in the common areas.

(3) Proceedings relating to applications, renewals, suspensions, or revocations of the license created by this administrative regulation shall be conducted in the same manner as for any retail licensee, in accordance with the provisions of KRS Chapters 243 and 13B.

(4) If the board suspends the entertainment destination center license, all retail drink sales at its nonpermanent locations, kiosks, or common areas shall be suspended.

(5) If the alcoholic beverage license of an individual tenant of the center is suspended, the retail licensee shall not sell alcoholic beverages for the duration of the suspension from either its permanent or nonpermanent locations.

TONY DEHNER, Board Chairman and Commissioner
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: May 15, 2012

FILED WITH LRC: May 15, 2012 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this amended administrative regulation shall be held on June 28, 2012, at 1:00 p.m. Eastern Time at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing by June 22, 2012, 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 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 amended 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 comments on the proposed amended administrative regulation. Written comments shall be accepted until July 2, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed amended administrative regulation to the contact person.

CONTACT PERSON(S): Virginia Vanaman Davis, Internal Policy Analyst IV or Stephan B. Humphress, General Counsel, Commonwealth of Kentucky, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479.

Regulatory Impact Analysis and Tiering Statement

Contact Person(s): Stephen B. Humphress or Virginia Vanaman Davis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the requirements for issuance of an entertainment destination centers ("EDC") license and the activities permitted by the holder regarding alcoholic beverages sales. The main benefit of the EDC license permits patrons of different alcoholic beverage licensed premises (tenants that are separately licensed within the EDC center) to co-mingle, socialize, and consume alcoholic beverages on the licensed EDC's designated common area. The EDC works closely with the separately licensed premises for advertising and promotion purposes, and various high quality, high energy entertainment events are held inside the EDC. Because the EDC offers an attractive atmosphere and quality entertainment venues, the EDC is designed to promote tourism and convention center businesses for it community.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to promote the economic growth and advancement of tourism and convention business for cities and counties. The administrative regulation amendment is particularly needed in cities bordering rival states as the EDC allows Kentucky communities to compete with other states with similar venues when attracting entertainment events and related tourism income to Kentucky.

(c) How this administrative regulation conforms to the content

of the authorizing statutes: KRS 243.030(41) provides a license fee for an entertainment destination center license. KRS 243.030(46) and KRS 243.040(18) provide authority to the Board to create, by administrative regulations, special licenses which the Board finds to be necessary for the administration of KRS Chapters 241, 242, 243, and 244 and for the proper regulation and control of the trafficking in alcoholic beverages. KRS 241.060(1) provides authority to the Kentucky Alcoholic Beverage Control Board (the "Board"), to promulgate reasonable administrative regulations governing procedures relative to the application for and revocation of licenses, the supervision and control of the use, manufacture, sale, transportation, storage, advertising, and trafficking of alcoholic beverages, and all other matters over which the Board has jurisdiction. By 804 KAR 4:370, the Board set forth necessary qualifications for issuance of an EDC license, permitted activities by the holder of an EDC license, and identified licensees' responsibilities under law.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 243.030(41) authorizes the Department of Alcoholic Beverage Control (the "Department"), to issue an EDC license. Regulation 804 KAR 4:370 assists the Department in administering KRS 243.030(41) by establishing the requirements for issuance of an EDC license and listing alcoholic beverage activities permitted by the holder of an EDC license. The primary benefit of an EDC license is that it permits patrons of different alcoholic beverages licensed premises (tenants and separately licensed within the EDC center) to co-mingle, socialize, and consume alcoholic beverages a licensed EDC designated common area. The EDC works closely with the separately licensed premises for advertising and promotion purposes, and various high quality, high energy entertainment events are held inside the EDC. Because the EDC offers an attractive atmosphere and quality entertainment venues, the EDC promotes tourism and convention center business for its community.

(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 current administrative regulation only permits the Department to issue an EDC license in a first class city, a county containing a first class city, or an urban-county government. The Department desires to issue EDC licenses in second class cities, and counties containing second class cities, so as to assist and facilitate such entertainment, convention, and tourism business and income, and related private capital investments, in such communities. Amendment of the regulation would permit EDC licenses for facilities in cities of the second class, and in counties including such cities, if the facilities meet incentive qualifications for an entertainment destination center project in KRS 148.853(2)(b)(1) which requires investment costs exceeding five million dollars ($5,000,000).

(b) The necessity of the amendment to this administrative regulation: This administrative regulation amendment is necessary to promote the economic growth and advancement of tourism and convention center business for second class cities and counties containing a second class city. The amendment is particularly needed in Northern Kentucky so as to allow communities there to compete with Ohio forums in attracting entertainment events and related tourism income to Kentucky.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 243.030(41) provides a license fee for an entertainment destination center license. KRS 243.030(46) and KRS 243.040(18) provide authority to the Board to create, by administrative regulations, special licenses which the Board finds to be necessary for the administration of KRS Chapters 241, 242, 243, and 244 and for the proper regulation and control of the trafficking in alcoholic beverages. KRS 241.060(1) provides authority to the Kentucky Alcoholic Beverage Control Board (the "Board"), to promulgate reasonable administrative regulations governing procedures relative to the application for and revocation of licenses, the supervision and control of the use, manufacture, sale, transportation, storage, advertising, and trafficking of alcoholic beverages, and all other matters over which the Board has jurisdiction. By the contemplated amendments to 804 KAR 4:370, the Board set forth necessary qualifications for issuance of an EDC license in a second class city and county containing a second class city, permitted activities by the holder of an EDC license, and identified licensees' responsibilities under law.

(d) How the amendment will assist in the effective administration of the statutes: KRS 243.030(41) authorizes the Department of Alcoholic Beverage Control (the "Department"), to issue an EDC license. The Amendment to 804 KAR 4:370 assists the Department in administering KRS 243.030(41) by establishing the requirements for issuance of an EDC license and listing alcoholic beverage activities permitted by the holder of a EDC license in a second class city or county containing a second class city. Because the EDC offers an attractive atmosphere and quality entertainment venues, the EDC promotes tourism and convention center business for its community. The administrative regulation amendment is necessary to promote the economic growth and advancement of tourism and convention center business for second class cities and counties containing a second class city. The amendment is particularly needed in Northern Kentucky so as to allow communities there to compete with Ohio forums in attracting entertainment events and related tourism income to Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation amendment will affect businesses and organizations located within wet second class cities and counties containing second class cities, which have large facilities to attract major convention and entertainment activities. There would only be a limited number of business entities and facilities that would meet the requirements of this administrative regulation amendment. The business entities that could qualify under this regulation amendment would have to have major financial resources and extended knowledge and experience in the convention business and entertainment fields. These entities must be willing to invest large amounts of private capital into the local economy by soliciting and promoting convention business, tourism and high energy entertainment activities. The amendment will provide all qualified facilities in second class cities and their counties with a license type to facilitate a high quality, high energy entertainment business center.

(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: By the amendment, no entity within a second class city, or county containing a second class city, would be required to take any action unless they desired to obtain an EDC license. Any qualifying business located therein could apply for an EDC license to facilitate and promote convention and tourism businesses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): KRS 243.030(41) provides that an applicant would be required to pay a license fee of $7,500.00 for an EDC license. There would only be minimal administrative costs to the Department because the Department already regulates and enforces all alcoholic beverage laws in wet second class cities and their counties. No additional costs are expected during any subsequent years.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Businesses obtaining an EDC license would be permitted to offer an attractive atmosphere and quality entertainment venues, and benefit from high tenancy occupancy rates, increased alcoholic beverages sales from major convention and entertainment events held in at EDC premises or close convention centers. Second class cities and counties containing second class cities would experience economic growth and increased revenues from increased entertainment, tourism, and convention business.

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

(a) Initially: Nominal. The Department will not incur any additional budgetary expenditure upon the approval of this administrative regulation amendment because the Department is already set up to administer and enforce all the statutes and regulations per-

taining to trafficking in alcoholic beverages in the Commonwealth currently. The cities of the second class or the counties containing cities of the second class should expect minimal or no increase in expenditures upon the approval of this administrative regulation amendment through regulating and processing licensing application requests and some minimal additional enforcement. All second class cities and their counties have already appointed local ABC administrators to license and enforce the provisions of KRS Chapter 241-244.

(b) On a continuing basis: Nominal. There will be no additional or continuing expenditures upon the approved of this administrative regulation amendment.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? The existing trust and agency account, KRS 243.025, already provides the necessary funding to be used for the implementation and enforcement of this amendment for this year and subsequent years.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: None. An increase in fees will not be necessary to implement this administrative regulation amendment. KRS 243.030(41), 243.030, 243.060 and 243.070 already authorize the Department and local governments to collect a license fee for the trafficking in alcoholic beverages in their territories.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No additional fees will be established and no additional funding will be necessary to implement this administrative regulation amendment.

(9) TIERING: Is tiering applied? Tiering is not applied as the provisions of this administrative regulation amendment apply to all licensees equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department and local governments of second class cities and counties containing second class cities are authorized under KRS Chapter 241-244 to regulate alcoholic beverage licensing and activities. These governmental entities would be responsible for regulating EDC licensed premises.

3. Identify each state or federal statute or federal regulation that requires or authorized the action taken by the administrative regulation. KRS 241.060, 241.140, 241.160, 243.030(41), 243.040(18), 243.060 and 243.070 are Kentucky state statues authorize the action taken by the administrative regulation amendment. Federal laws pertaining to retailers of alcoholic beverages are authorized under Title 27 – Alcohol, Tobacco Products and Firearms, Chapters 1 Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury.

4. Estimate the effect of this administrative regulation on the expenditures and revenues 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 amendment will not increase the Department's budget needs because the Department's budget already covers the necessary expenditures for regulating all alcoholic beverage licensed premises. Second class cities, and counties containing second class cities, also have existing budgets to cover the necessary expenditures for regulating all alcoholic beverage licensed premises in their jurisdiction.

(a) How 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 will receive $7,500 for each subsequent year for a new or renewals of the entertainment destination center license issued by this administrative regulation amendment. Cities and counties will see increased tax revenues generated by additional entertainment, convention, and tourism business.

(c) How much will it cost to administer this program for the first year? The existing trust and agency account, KRS 243.025, currently provides the necessary funding used for the implementation and enforcement of this amendment. The cost to local cities of the second class and their counties in the implementation and enforcement of this amendment is unknown but the local ABC offices already budget for the regulation and enforcement of alcoholic beverage laws in their territories. No additional costs are anticipated to administer this administrative regulation amendment.

(d) How much will it cost to administer this program for the subsequent years? The state and local governments are currently covered under their budgets to regulate and enforce the provisions of this administrative regulation amendment. Minimal additional costs are anticipated to administer this amendment.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. The effect of this amendment will be minimal on the Department. KRS 243.025 currently provides for the necessary funding to administer and enforce this amendment for this year and subsequent years through their trust and agency account. Cities of the second class and their counties currently budgets for the monitoring and enforcement of all trafficking in alcoholic beverages at this time.

Revenue (+/-): KRS 243.030(41) authorizes the Department to receive $7,500 for each licensed issued under this administrative regulation amendment.

Expenditures (+/-): Minimal to none. KRS 243.025 provides the necessary funds to administer and enforce the provisions of this administrative regulation amendment.

Other Explanation: There may be a minimal cost to administer this program at the local government level for this year or subsequent years. KRS 241.140, 241.160, 243.060 and 243.070 already establishes the authority for cities of the second class and their counties to regulate and enforce the trafficking of alcoholic beverages within their juridical boundaries.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate for this administrative regulation amendment.

2. State compliance standards. There is no federal mandate for this administrative regulation amendment.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate for this administrative regulation amendment.

4. Will this administrative regulation amendment impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? There is no federal mandate for this administrative regulation amendment.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate for this administrative regulation amendment.

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amendment)

810 KAR 1:018. Medication; testing procedures; prohibited practices.

RELATES TO: KRS 230.210[~~(9)~~], 230.215, 230.240[~~(2)~~], 230.260[~~(1), (2), (3), (6), (7)~~], 230.265[~~(2)~~], 230.290[~~(2)~~], 230.320[~~(1), EO 2008-668~~]

STATUTORY AUTHORITY: KRS 230.215[~~(2)~~], 230.240[~~(2)~~], 230.260[~~(3)~~], 230.320[~~(1), EO 2008-668~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission[~~Authority~~] to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in Kentucky[~~the Commonwealth~~]. KRS 230.240(2) requires the commission[~~Authority~~] to promulgate administrative regulations restricting or prohibiting the administration

of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. [~~EO 2008-668, effective July 3, 2008, established the Kentucky Horse Racing Commission and transferred all authority, functions, and responsibilities of the Kentucky Horse Racing Authority to the commission.~~]This administrative regulation establishes requirements and controls in the administration of drugs, medications, and substances to horses, governs certain prohibited practices, and establishes trainer responsibilities relating to the health and fitness of horses.

Section 1. Definitions. (1) "AAS" or "anabolic steroid" means an anabolic androgenic steroid.

(2) "Administer" means to apply to or cause the introduction of a substance into the body of a horse.

(3) "Commission laboratory" means a laboratory chosen by the commission to test biologic specimens[~~samples~~] from horses taken under the supervision of the commission veterinarian.

(4) "Location under the jurisdiction of the commission" [~~or "Association grounds"~~] means a licensed race track or training center[~~as defined in KRS 230.210(9)~~].

(5) "Permitted NSAIDs" means the following permitted nonsteroidal anti-inflammatory drugs: phenylbutazone, flunixin, and ketoprofen, if administered in compliance with Section 8 of this administrative regulation.

(6) "Positive finding" means the commission laboratory has conducted testing and determined that a drug, medication, or substance, the use of which is restricted or prohibited by this administrative regulation, was present in the sample.

(a) For the drugs, medications, or substances listed in Section 2(3), 6, or 8 of this administrative regulation, it shall be necessary to have a finding in excess of the established concentration level as provided in this administrative regulation for the finding to be considered a positive finding.

(b) Positive findings also include:

1. Substances present in the horse in excess of concentrations at which the substances could occur naturally; and

2. Substances foreign to a horse at concentrations that cause interference with testing procedures.

(7) "Primary sample" means the primary sample portion of the biologic specimen taken under the supervision of the commission veterinarian to be tested by the commission laboratory.

(8) "Split sample" means the split sample portion of the biologic specimen[~~sample~~] taken under the supervision of the commission veterinarian to be tested by the split sample laboratory.

(9)[~~(8)~~] "Split sample laboratory" means the laboratory approved by the commission to test the split sample portion of the biologic specimen[~~sample~~] from horses taken under the supervision of the commission veterinarian.

(10)[~~(9)~~] "Test barn" means a fenced enclosure sufficient in size and facilities to accommodate the stabling of horses temporarily detained for obtaining[~~sample~~] specimens for pre-race[~~prerace~~] and post-race[~~postrace~~] testing.

(11)[~~(10)~~] "Therapeutic AAS" means boldenone, nandrolone, or testosterone.

Section 2. Use of Medication. (1) Therapeutic measures and medication necessary to improve or protect the health of a horse shall be administered to a horse in training under the direction of a licensed veterinarian.

(2) Except as otherwise provided in Sections 4, 5, 6, and 8 of this administrative regulation, while participating in a race, a horse shall not carry in its body any drug, medication, substance, or metabolic derivative, that:

(a) Is a narcotic;

(b) Could serve as an anesthetic or tranquilizer;

(c) Could stimulate, depress, or affect the circulatory, respiratory, cardiovascular, musculoskeletal, or central nervous system of a horse; or

(d) Might mask or screen the presence of a prohibited drug, or prevent or delay testing procedures.

(3) Therapeutic medications shall not be present in excess of established threshold concentrations set forth in this administrative regulation. The threshold for furosemide is set forth in Section 6 of this administrative regulation. The thresholds for permitted NSAIDs are set forth in Section 8 of this administrated regulation.

(4) A substance shall not be present in a horse in excess of a concentration at which the substance could occur naturally if it affects the performance of a[~~the~~] horse. It shall be the responsibility of the commission to prove that the substance was in excess of normal concentration levels[~~and that it affected the performance of the horse~~].

(5) It shall be prima facie evidence that a horse was administered and carried, while running in a race, a drug, medication, substance, or metabolic derivative thereof prohibited by this section if:

(a) A biologic specimen[~~sample~~] from the horse was taken under the supervision of the commission veterinarian promptly after a horse ran in a race; and

(b) The commission laboratory presents to the commission a report of a positive finding.

(6) The commission shall utilize the ["]Kentucky Horse Racing Commission Uniform Drug, Medication, and Substance Classification Schedule as provided in 810 KAR 1:040[~~Authority Uniform Drug and Medication Classification Schedule", 9/08~~], for classification of drugs, medications, and substances [~~drugs and medications~~]violating this administrative regulation. Penalties for violations of this administrative regulation shall be implemented in accordance with 810 KAR 1:028.

Section 3. Treatment Restrictions. (1) Except as provided in Section 4 of this administrative regulation, a person other than a veterinarian licensed to practice veterinary medicine in Kentucky[~~this jurisdiction~~] and licensed by the commission shall not administer a prescription or controlled drug, medication, or other substance to a horse at a location under the jurisdiction of the commission.

(2) The only injectables allowed within twenty-four (24) hours prior to post time of the race in which the horse is entered shall be furosemide,[~~and the permitted adjunct bleeder medications~~] as set forth in Section 6 of this administrative regulation.

(3) Except as provided by subsection (5) of this section, a person other than a veterinarian licensed to practice veterinary medicine in Kentucky[~~this jurisdiction~~] and licensed by the commission shall not possess a hypodermic needle, syringe, or injectable of any kind at a location under the jurisdiction of the commission.

(4) A veterinarian licensed to practice veterinary medicine in Kentucky[~~this jurisdiction~~] and licensed by the commission shall use only single-use disposable needles and syringes, and shall dispose of them in a container approved[~~provided~~] by the commission veterinarian.

(5) If a person regulated by the commission has a medical condition that[~~which~~] makes it necessary to have a needle and syringe at a location under the jurisdiction of the commission, the person shall request prior permission from the stewards and furnish a letter from a licensed physician explaining why it is necessary for the person to possess a needle and syringe. The stewards may grant approval for a person to possess and use a needle and syringe[~~syringes~~] at a location under the jurisdiction of the commission, but may also establish necessary restrictions and limitations.

(6) A[~~An~~] commission employee may accompany a veterinarian at a location under the jurisdiction of the commission and take possession of a syringe, needle, or other device used to administer a substance to a horse.

Section 4. Certain Permitted Substances. Liniments, antiseptics, antibiotics, ointments, leg paints, washes, and other products commonly used in the daily care of horses may be administered by a person, other than a licensed veterinarian if:

(1) The treatment does not include any drug, medication, or substance otherwise prohibited by this administrative regulation;

(2) The treatment is not injected; and

(3) The person is acting under the direction of a licensed trainer or veterinarian licensed to practice veterinary medicine in Kentucky[~~this jurisdiction~~] and licensed by the commission.

Section 5. Antiulcer Medications. The following antiulcer medications may be administered orally, at the dosage stated in this section, up to twenty-four (24) hours prior to post time of the race in which the horse is entered:

(1) Cimetidine (Tagamet®): 8-20 mg/kg;

(2) Omeprazole (Gastrogard®): two and two-tenths (2.2) grams;[~~and~~]

(3) Ranitidine (Zantac®): eight (8) mg/kg; and

(4) Sulcrafate: 2-4 grams.

Section 6. Furosemide[~~and Adjunct Bleeder Medication;~~] Use on Race Day. (1) Furosemide may be administered, in accordance with this section, to a horse that is entered to compete in a race.

(2)(a) The commission veterinarian shall administer furosemide prior to a race.

(b) If the commission veterinarian is unavailable to administer furosemide to a horse prior to a race, the commission shall approve a licensed veterinarian to perform the administration. The commission shall enter into a contract with any veterinarian who will administer furosemide to a horse prior to a race.

(c) If the furosemide is administered by a veterinarian under contract with the commission, the administering veterinarian shall provide a written report to the commission veterinarian no later than two (2) hours prior to post time of the race in which the horse receiving the furosemide is competing.

(3) Furosemide may be used under the following circumstances:

(a) Furosemide shall be administered at a location under the jurisdiction of the commission, by a single intravenous injection, not less than four (4) hours prior to post time for the race in which the horse is entered.

(b) The [~~syringe employed in the injection shall be provided immediately to the commission veterinarian, steward, or commission employee, if requested, to determine if there has been a violation of this administrative regulation.~~

~~(c) The~~]furosemide dosage administered shall not exceed 500 mg, nor be less than 150 mg.

(c)[~~(d)~~] The specific gravity of a post-race urine sample shall not be below 1.010. If the specific gravity of the post-race urine sample is determined to be below 1.010, a quantification of furosemide in blood serum or plasma shall be performed. If a horse fails to produce a urine specimen, the commission laboratory shall perform a quantification of furosemide in the blood serum or plasma specimen. Concentrations above 100 nanograms of furosemide per milliliter of blood serum or plasma shall constitute a violation of this section.

(4) After consulting with industry representatives, the commission shall determine the cost of administering furosemide based on prevailing costs of veterinary services and supplies at the time the determination is made. The commission shall maintain records documenting the basis for its determination and the cost shall be prominently posted in the racing office.[~~(e) A horse eligible to receive furosemide pursuant to Section 7 of this administrative regulation that does not show a detectable concentration of the drug in the post-race urine, plasma, or serum shall be in violation of this administrative regulation.~~

~~(3) Up to two (2) of the following adjunct bleeder medications may be administered to a horse not less than four (4) hours prior to post time for the race in which the horse is entered:~~

~~(a) Aminocaproic acid:~~

~~(b) Carbazochrome:~~

~~(c) Conjugated estrogens; and~~

~~(d) Tranexamic acid.~~]

Section 7. Furosemide Eligibility. (1)(a) A horse shall be eligible to race with furosemide if the licensed trainer or a licensed veterinarian determines that it would be in the horse's best interests to race with furosemide. Notice that a horse shall race with or without furosemide shall be made at the time of entry to ensure public notification, including publication in the official racing program.

(b) It shall constitute a violation of this administrative regulation when notice is made pursuant to this section that a horse shall race with furosemide and the post-race urine, blood serum or plasma does not show a detectable concentration of furosemide in the post-race urine, blood serum or plasma.

(c)[~~(b)~~] Horses eligible for furosemide and entered to start may be monitored by a[~~an~~] commission-approved representative during the four (4) hour period prior to post time of the race in which the horse is entered.

(2) [~~A horse eligible for furosemide shall receive furosemide unless the licensed trainer or licensed veterinarian submits a written request to the commission veterinarian to no longer administer furosemide to the horse. The request shall be on the form "Certificate of Termination of Lasix KHRA 100-5 (8-06)", incorporated by reference in 811 KAR 1:090, and shall be submitted to the commission-approved representative not later than time of entry.~~

~~(3)(a)~~]After a horse has been determined [~~by the commission veterinarian~~]to no longer be required to receive furosemide, the horse shall not be eligible to receive furosemide [~~for a period of sixty (60) calendar days~~]unless [~~it is determined by~~]the licensed trainer or a licensed veterinarian determines that it would be in the horse's best interest to race[~~veterinarian, in consultation~~] with furosemide and the licensed trainer or a licensed[~~the commission~~] veterinarian complies with the requirements of this section[~~, that it is detrimental to the welfare of the horse to not be on furosemide~~]. [~~(b) If a horse is determined by the commission veterinarian to be ineligible to receive furosemide a second time in a three hundred sixty-five day period, the horse shall not be eligible to receive furosemide for a period of ninety (90) calendar days.~~

~~(4) A horse that has been placed on a furosemide or bleeder list in another jurisdiction may be eligible to receive furosemide in this jurisdiction.~~]

Section 8. Permitted Non-steroidal Anti-inflammatory Drugs (NSAIDs). (1) One (1) of the following NSAIDs may be used by a single intravenous injection not less than twenty-four (24) hours prior to[~~before~~] post time for the race in which the horse is entered if the concentration in the horse's [~~sample or~~]specimen does not exceed the following levels when tested post race:

(a) Phenylbutazone - not to exceed two (2)[~~five (5)~~] micrograms per milliliter of blood serum or plasma[~~or serum~~];

(b) Flunixin - not to exceed twenty (20) nanograms per milliliter of blood serum or plasma[~~or serum~~]; and

(c) Ketoprofen - not to exceed ten (10) nanograms per milliliter of blood serum or plasma[~~or serum~~].

(2) No NSAID, including[~~One (1) of~~] the permitted NSAIDs[~~or any other NSAID~~] shall [~~not~~] be administered within twenty-four (24) hours prior to[~~before~~] post time for the race in which the horse is entered.

(3)(a) The use of any NSAID other than the permitted NSAIDs, and the use of multiple permitted NSAIDs shall be discontinued at least forty-eight (48) hours prior to[~~before~~] post time for the race in which the horse is entered.

(b) A finding of phenylbutazone below a concentration of one-half (.5)[~~one (1)~~] microgram per milliliter of blood serum or plasma[~~or serum~~] shall not constitute a violation of this section.

(c) A finding of flunixin below a concentration of three (3) nanograms per milliliter of blood serum or plasma shall not constitute a violation of this section.

(4) A horse that has been administered an[~~a~~] NSAID shall be subject to collection of a biologic specimen[~~sample being taken~~] under the supervision of the commission[~~Authority~~] veterinarian to determine the quantitative NSAID level present in the horse or the presence of other drugs in the horse.

Section 9. Anabolic Steroids. (1) An exogenous AAS[~~anabolic androgenic steroid~~] shall not be present in a horse that is racing. The detection of an exogenous AAS [~~anabolic steroid~~] or metabolic[~~metabolite~~] derivative in a post-race[~~post-race biologic sample~~] or a pre-race[~~prerace biologic~~] sample after the horse has been entered shall constitute a violation of this administrative regulation.

(2) The detection in a post-race[~~postrace~~] sample of an endogenous AAS[~~anabolic steroid~~] or metabolic[~~metabolite~~] derivative where the concentration of the AAS, a metabolite, a marker, or any relevant ratio as has been published in peer-reviewed scientific literature deviates from a naturally occurring physiological level shall constitute a violation of this administrative regulation. The following shall be deemed to be naturally occurring physiological levels:

(a) Boldenone (free and conjugated):

1. In male horses other than geldings - 15 ng/ml in urine or 200 pg/ml in blood serum or plasma; and

2. In geldings and female horses, boldenone shall not be permitted.[;]

(b) Nandrolone (free and conjugated):

1. In geldings - 1 ng/ml in urine or 50 pg/ml in blood serum or plasma;

2. In fillies and mares - 1 ng/ml in urine or 50 pg/ml in blood serum or plasma; and

3. In male horses other than geldings - 45 ng/ml of metabolite, 5α[5Σ]-estrane-3β, 17α[17Σ]-diol in urine or a ratio in urine of 5α[5Σ]-estrane-3β, 17α[17Σ]-diol to 5α[5Σ]-estrene-3β, 17α[17Σ]-diol of >1:1.[; and]

(c) Testosterone (free and conjugated):

1. In geldings - 20 ng/ml in urine or 25 pg/ml in blood serum or plasma; and

2. In fillies and mares - 55 ng/ml in urine or 25 pg/ml in blood serum or plasma.

(3) In accordance with this subsection, a horse may receive one (1) therapeutic AAS.

(a) The therapeutic AAS shall be given for the sole purpose of treating an existing illness or injury having been diagnosed by the regular attending veterinarian. An owner or trainer who is uncertain about whether a particular purpose is considered to be therapeutic shall consult with the commission prior to administration.[;]

(b) The horse shall be ineligible to race in Kentucky until all of the following have occurred:

1. A minimum of sixty (60) days has passed since the administration of the therapeutic AAS to the horse;

2. A relevant specimen[biologic sample] is taken from the horse;

3. The sample is tested for AAS[anabolic steroids] by a laboratory from the approved list established by the commission at the expense of the owner of the horse; and

4. The commission has received a report from the laboratory of a negative finding regarding the sample.[;]

(c) A report from the commission laboratory of a negative finding in a pre-race sample does not provide a safe harbor for the owner, trainer, veterinarian or horse. A report from the commission laboratory of a positive finding in a post-race[postrace] sample shall be treated as a violation of this administrative regulation even if there was a negative finding by the commission laboratory in a pre-race sample.[;]

(d) [The horse shall not be entered to race until at least 60 days after the administration of the Therapeutic AAS to the horse.

(e)]Procedures for administration of therapeutic AAS.[:]

1. A Therapeutic AAS shall be administered by a licensed veterinarian.[;]

2. Other treatment methods shall be investigated prior to considering the use of therapeutic AAS.[;]

3. Medical records for the horse shall document:

a. Consideration of alternative treatment methods; and

b. The necessity for administering the therapeutic AAS.

4. The administering veterinarian shall record on the Therapeutic AAS Administration Form the following information:

a. The therapeutic AAS administered, the amount in milligrams, route, and site of administration;

b. The date and time of administration;

c. The name, age, sex, color, and registration certificate number of the horse to which the therapeutic AAS is administered; and

d. The diagnosis and justification for administration of the therapeutic AAS to the horse.

5. The Therapeutic AAS Administration Form shall be signed by the veterinarian administering the medication.

6. The Therapeutic AAS Administration Form shall be delivered electronically to the commission equine medical director[of the Kentucky Horse Racing Commission] within seventy-two (72) hours after administration. If the Therapeutic AAS Administration[Administrative] Form cannot be delivered electronically, the veterinarian[practitioner] shall file the form with the equine medical director in person or through the mail. The submitting veterinarian shall confirm receipt by the equine medical director.

(4) [If a horse is shipped into Kentucky from outside the state, prior to being eligible to race in Kentucky:

(a) The protocol in subsection (3) of this section shall be complied with in its entirety; or

(b)1. The trainer shall certify that he or she has had control of the horse for the sixty (60) days previous to racing and the horse has not been administered an anabolic steroid; or

2. The trainer shall certify that he or she has not had control of the horse for the sixty (60) days previous to racing but shall acknowledge that he or she is responsible and accountable if a postrace test identifies a violation of this administrative regulation.

(5)] Substances referred to in subsections (1) and (2) of this section are "Class B" drugs. A positive test for an exogenous AAS[anabolic steroid] or for an amount of an endogenous AAS[anabolic steroid] in excess of a concentration referred to in subsection (2) of this section shall be subject to the penalties referred to in 810 KAR 1:028.

(5)[(6)](a) The detection of a therapeutic AAS or metabolic[metabolite] derivative in any sample in excess of a threshold level set forth in subsection (2) of this section shall constitute a violation.

(b) Each separate therapeutic AAS detected in excess of a threshold level shall constitute a separate violation.

(6)[(7)] The trainer and veterinarian for the horse shall be charged accordingly and shall be subject to penalties for a violation of this administrative regulation.

(7)[(8)](a) A claimed horse may be tested for the presence of an AAS if the claimant requests the test when the claim form is completed and deposited in the association's claim box. The claimant shall bear the costs of the test. The results of the test shall be reported to the chief [Senior] state steward.

(b) If a test is positive, the claim may be voided at the option of the claimant and the claimant shall be entitled to return of all sums paid for the claimed horse, expenses incurred after the date of the claim, and the costs of testing.

(c) If the test is negative, the claimant shall reimburse the entity paying for the testing or the prior owner for the cost of the testing.

(d) While awaiting test results, a claimant:

1. Shall exercise due care in maintaining and boarding a claimed horse; and

2. Shall not materially alter a claimed horse.

(8)[(9)] The gender of the horse from which a post-race biologic specimen[sample] is collected shall be identified to the commission[state] veterinarian and the testing laboratory.

(9)[(10)] Only a licensed veterinarian may possess or administer a therapeutic AAS. [(11) If there is a positive test for AAS from a sample taken from November 4, 2008 through December 30, 2008, it shall be considered an aggravating factor in any subsequent case involving a violation of this administrative regulation.]

Section 10. Test Barn. (1) During a licensed meet, a licensed association shall provide and maintain a test barn on association grounds[a test barn].

(2) The test barn shall be a fenced enclosure sufficient in size and facilities to accommodate the stabling of horses temporarily detained for the taking of biologic[sample] specimens for pre-race and[prerace or] post-race testing.

(3) The test barn shall be under the supervision and control of the commission veterinarian.

Section 11. Sample Collection, Testing, and Reporting. (1) Sample collection shall be done in accordance with the procedures provided in 810 KAR 1:130 and under the instructions provided by the commission veterinarian.[The commission veterinarian shall take a sample from a horse that finished first in a race and a horse or horses designated by the stewards to determine if there has been a violation of this administrative regulation.]

(2) The commission veterinarian shall determine a minimum sample requirement for the commission laboratory which shall be uniform for each horse and which shall be separated into primary and split samples. [(a) If the specimen obtained from a horse is less than the minimum sample requirement, the entire specimen shall be sent to the commission laboratory.

(b) If a specimen obtained is greater than the minimum sample requirement but less than twice that amount, the portion of the

~~sample that is greater than the minimum sample requirement shall be secured as the split sample.~~

~~(c) If a specimen obtained is greater than twice the minimum sample requirement, a portion of the sample approximately equal to the amount provided for the commission laboratory shall be secured as the split sample.~~]

(3) An owner or trainer may request that a split sample be:

(a) Taken from a horse he owns or trains by the commission veterinarian; and

(b) Tested by the split sample laboratory.

(4) The cost of testing under subsection (3) of this section, including shipping, shall be borne by the owner or trainer requesting the test.

(5)(a) Stable equipment other than that necessary for washing and cooling out a horse shall not be permitted in the test barn.

(b) Buckets and water shall be furnished by the commission veterinarian.

(c) If a body brace is to be used on a horse, it shall:

1. Be supplied by the trainer;[~~,~~] and

2. Applied[~~Administered~~] only with the permission and in the presence of the commission veterinarian or his designee.

(d) A licensed veterinarian may attend to a horse in the test barn[~~, but~~] only with the permission and in the presence of the commission veterinarian or his designee.

(6) Within five (5) business days of receipt of notification by the commission laboratory of a positive finding, the commission shall notify the owner and trainer orally or in writing of the positive finding.

(7) The stewards shall schedule a hearing within fourteen (14) calendar days of notification by the commission to the owner and trainer. The hearing may be continued if the stewards determine a continuation is necessary to effectively resolve the issue.

Section 12. Storage and Shipment of Split Samples. (1) Split samples shall be secured and made available for further testing in accordance with the following procedures:

(a) Split samples shall be secured in the test barn in the same manner as the primary samples for shipment to the commission laboratory, as addressed in Section 11 of this administrative regulation, until the primary[~~split~~] samples are packed and secured for shipment to the commission laboratory. Split samples shall then be transferred to a freezer or refrigerator at a secure location approved and chosen by the commission;[~~.~~]

(b) A freezer or refrigerator for storage of split samples shall be equipped with a lock. The lock shall be secured to prevent access to the freezer or refrigerator at all times except as specifically provided by paragraph (c) of this subsection;[~~.~~]

(c) A freezer or refrigerator for storage of split samples shall be opened only for depositing or removing split samples, for inventory, or for checking the condition of samples;[~~.~~]

(d) A log shall be maintained by the commission veterinarian that shall be used each time a split sample freezer or refrigerator is opened to specify each person in attendance, the purpose for opening the freezer or refrigerator, identification of split samples deposited or removed, the date and time the freezer or refrigerator was opened, the time the freezer or refrigerator was closed, and verification that the lock was secured prior to and after opening of the freezer or refrigerator. A[~~An~~] commission veterinarian or his [~~or her~~]designee shall be present when the freezer or refrigerator is opened;[~~.~~]

(e) Evidence of a malfunction of a split sample freezer or refrigerator [~~or samples that are not in a frozen condition during storage~~]shall be documented in the log; and[~~.~~]

(f) The commission shall be considered the owner of a split sample.

(2)(a) A trainer or owner of a horse receiving notice of a positive finding may request that a split sample corresponding to the portion of the sample[~~specimen~~] tested by the commission laboratory be sent to the split sample laboratory. The party requesting the split sample shall select from a list of laboratories approved by the commission to perform the analysis.

(b) The request shall be made in writing and delivered to the stewards within three (3) business days after the trainer or owner of the horse receives oral or written notice of the positive finding by[~~findings of~~] the commission laboratory.

(c) A split sample so requested shall be shipped as expeditiously as possible.

(3)(a) The owner or trainer requesting testing of a split sample shall be responsible for the cost of the testing, including the cost of shipping.

(b) Failure of the owner, trainer, or a designee to appear at the time and place designated by the commission veterinarian in connection with securing, maintaining, or shipping the split sample shall constitute a waiver of any right to be present during split sample testing procedures.

(c) Prior to shipment of the split sample, the commission shall confirm:

1. That the split sample laboratory has agreed to provide the testing requested;

2. That the split sample laboratory has agreed to send results to [~~both the person requesting the testing and~~]the commission; and

3. That arrangements for payment satisfactory to the split sample laboratory have been made.

(d) The commission shall maintain a list of laboratories approved for the testing of split samples and the list shall be on file at the offices of the commission.

Section 13. Split Sample Chain of Custody. (1) Prior to opening the split sample freezer or refrigerator, the commission shall provide a split sample chain of custody verification form. The form to be used shall be the [~~"~~]Split Sample Chain of Custody Form[~~"~~]. The form shall be fully completed during the retrieval, packaging, and shipment of the split sample and shall contain the following information:

(a) The date and time the sample is removed from the split sample freezer or refrigerator;

(b) The sample number; and

(c) The address where the split sample is to be sent.

(2) A split sample shall be removed from the split sample freezer or refrigerator by a[~~an~~] commission employee after notice to the owner, trainer, or designee thereof and a[~~an~~] commission-designated representative shall pack the split sample for shipment in accordance with the packaging procedures directed by the commission. The Split Sample Chain of Custody Form shall be signed by both the owner's representative, if present, and the commission representative to confirm the proper packaging of the split sample for shipment. The exterior of the package shall be secured and sealed to prevent tampering with the package.

(3) The owner, trainer, or designee, if present, may inspect the package containing the split sample immediately prior to transfer to the delivery carrier to verify that the package is intact and has not been tampered with.

(4) The Split Sample Chain of Custody [~~Verification~~] Form shall be completed and signed by the representative of the commission and the owner, trainer, or designee, if present.

(5) The commission representative shall retain the original Split Sample Chain of Custody [~~Verification~~] Form and provide a copy to[~~for~~] the owner, trainer, or designee, if requested.

Section 14. Medical Labeling. (1) A licensee on association grounds shall not have within his or her possession, or within his or her personal control, a drug, medication, or other substance that is prohibited from being administered to a horse on a race day unless the product is properly and accurately labeled.

(2) A drug or medication which, by federal or state law, requires a prescription shall not be used or kept on association grounds unless validly prescribed by a duly-licensed veterinarian.

(3) A drug or medication shall bear a prescription label which is securely attached and clearly ascribed to show the following:

(a) The name of the product;

(b) The name, address, and telephone number of the veterinarian prescribing or dispensing the product;

(c) The name of the horse for which the product is intended or prescribed;

(d) The dosage, duration of treatment, and expiration date of the prescribed or dispensed product; and

(e) The name of the trainer to whom the product was dispensed.

Section 15. Trainer Responsibility. (1) A trainer shall be responsible for the condition of a horse in his or her care.

(2) A trainer shall be responsible for the presence of a prohibited drug, medication, substance, or metabolic derivative, including permitted medication in excess of the maximum-allowable concentration, in horses in his or her care.

(3) A trainer shall prevent the administration of a drug, medication, substance, or metabolic derivative that may constitute a violation of this administrative regulation.

(4) A trainer whose horse has been claimed shall remain responsible for a violation of this administrative regulation regarding that horse's participation in the race in which the horse is claimed.

(5) A trainer shall be responsible for:

(a) Maintaining the assigned stable area in a clean, neat, and sanitary condition at all times;

(b) Using the services of those veterinarians licensed by the commission to attend to horses that are on association grounds;

(c) The proper identity, custody, care, health, condition, and safety of horses in his or her care;

(d) Promptly reporting the alteration of the sex of a horse to the horse identifier and the racing secretary;

(e) Promptly reporting to the racing secretary and the commission veterinarian if a posterior digital neurectomy (heel nerving) is performed on a horse in his or her care and ensuring that this fact is designated on its certificate of registration;

(f) Promptly reporting to the racing secretary the name[~~names~~] of a mare in his or her care that has been bred and is entered to race;

(g) Promptly notifying the commission veterinarian of a reportable disease or communicable illness in a horse in his or her care;

(h) Promptly reporting the serious injury or death of a horse in his or her care at a location under the jurisdiction of the commission to the stewards and the commission veterinarian and ensuring compliance with Section 22 of this administrative regulation and 810 KAR 1:012, Section 14, governing postmortem examinations;

(i) Maintaining a medication record and medication status of horses in his or her care;

(j) Promptly notifying the stewards and the commission veterinarian if the trainer has knowledge or reason to believe that there has been an administration to a horse of a drug, medication, or other substance prohibited by this administrative regulation or has knowledge or reason to believe that a prohibited practice has occurred as set forth in Section 20 of this administrative regulation;

(k) Ensuring the fitness of every horse in his or her care to perform creditably at the distance entered;

(l) Ensuring that every horse he or she has entered to race is present at its assigned stall for a pre-race[~~prerace~~] soundness inspection as prescribed by 810 KAR 1:024, Section 4(1)(d) and (l) and 4(2);

(m) Ensuring proper bandages, equipment, and shoes;

(n) Ensuring the horse's presence in the paddock at least twenty (20) minutes prior to post time,[~~before post time~~] or at a time otherwise prescribed, before the race in which the horse is entered;

(o) Personally attending in the paddock and supervising the saddling of a horse in his or her care, unless an assistant trainer fulfills these duties or the trainer is excused by the stewards pursuant to 810 KAR 1:008, Section 3(6); and

(p) Attending the collection of a biologic specimen[~~sample~~] taken from a horse in his or her care or delegating a licensed employee or the owner to do so.

Section 16. Licensed Veterinarians. (1) A veterinarian licensed by the commission and practicing at a location under the jurisdiction of the commission shall be considered under the supervision of the commission veterinarian and the stewards.

(2) A veterinarian shall report to the stewards or the commission veterinarian a violation of this administrative regulation by a licensee.

Section 17. Veterinary[~~Veterinarians'~~] Reports. (1) A veterinarian who treats a horse at a location under the jurisdiction of the commission shall submit a Veterinary [~~KHRA -2 form, "Veterinarian~~] Report of Horses Treated to be Submitted Daily form [~~,"~~]to the commission veterinarian containing the following information:

(a) The name of the horse treated;

(b) The type and dosage of drug or medication administered or prescribed;

(c) The name of the trainer of the horse;

(d) The date and time of treatment; and

(e) Other pertinent treatment information requested by the commission veterinarian.

(2) The Veterinary Report of Horses Treated to be Submitted Daily[~~KHRA-2~~] form shall be signed by the treating practicing veterinarian.

(3) The Veterinary Report of Horses Treated to be Submitted Daily[~~KHRA-2~~] form shall be on file not later than the time prescribed on the next race day by the commission veterinarian.

(4) The Veterinary Report of Horses Treated to be Submitted Daily[~~KHRA-2~~] form shall be confidential, and its content shall not be disclosed except in the course of an investigation of a possible violation of this administrative regulation or in a proceeding before the stewards or the commission, or to the trainer or owner of record at the time of treatment.

(5) A timely and accurate filing of a Veterinary Report of Horses Treated to be Submitted Daily[~~KHRA-2~~] form by the veterinarian or his designee that is consistent with the analytical results of a positive test reported by the commission laboratory may be used as a mitigating factor in determining the appropriate penalties pursuant to 810 KAR 1:028.

(6) A veterinarian having knowledge or reason to believe that a horse entered in a race has received a drug, medication, or substance prohibited under this administrative regulation or has knowledge or reason to believe that a prohibited practice has occurred as set forth in Section 20 of this administrative regulation shall report this fact immediately to the commission veterinarian or to the stewards.

(7) A practicing veterinarian shall maintain records of all horses treated and of all medications sold or dispensed. The records shall include:

(a) The name of the horse;

(b) The trainer of the horse;

(c) The date, time, amount, and type of medication administered;

(d) The drug or compound administered;

(e) The method of administration; and

(f) The diagnosis.

(8) The records shall be retained for at least sixty (60) days after the horse has raced and shall be available for inspection by the commission[~~personnel~~].

Section 18. Veterinarian's List. (1) The commission veterinarian shall maintain a list of horses determined to be unfit to compete in a race due to illness, physical distress, unsoundness, infirmity, or other medical condition.

(2) A horse may be removed from the veterinarian's list when, in the opinion of the commission veterinarian, the horse is capable of competing in a race.

(3) The commission veterinarian shall maintain a bleeder list of all horses that have demonstrated external evidence of exercise-induced pulmonary hemorrhage during or after a race or workout as observed by the commission veterinarian.

(4) Every horse that is a confirmed bleeder, regardless of age, shall be placed on the bleeder list and be ineligible to race for the following time periods:

(a) First incident - fourteen (14) days;

(b) Second incident within a three hundred sixty-five (365) day period - thirty (30) days;

(c) Third incident within a three hundred sixty-five (365) day period - one hundred eighty (180) days; and

(d) Fourth incident within a three hundred sixty-five (365) day period - barred from racing for life.

(5) For the purpose of counting the number of days a horse is ineligible to run, the day after the horse bled externally shall be the first day of the recovery period.

(6) The voluntary administration of furosemide without an external bleeding incident shall not subject a horse to the initial period of ineligibility as defined in this section.

(7) [~~A horse shall be removed from the bleeder list only upon the direction of the commission veterinarian, who shall certify in writing to the stewards the recommendation for removal.~~

~~(8)~~] A horse that has been placed on a bleeder list in another jurisdiction may be placed on the bleeder list maintained by the commission veterinarian.

Section 19. Distribution of Purses, Barn Searches, and Retention of Samples. (1) For all races, purse money shall be paid pursuant to the process provided in 810 KAR 1:026, Section 28(3)[~~distributed seventy-two (72) hours after a race unless the commission laboratory has issued a preliminary or final report indicating the presence of a prohibited drug, medication, substance, or metabolic derivative in the biologic sample taken from a horse~~].

(2) The distribution of purse money prior to the issuance of a final laboratory report shall not be considered a finding that no prohibited drug, medication, substance, or metabolic derivative has been administered to a horse.

(3) After the commission laboratory issues a positive finding, the executive director of the commission or the stewards shall immediately authorize and execute an investigation into the circumstances surrounding the incident that is the subject of the positive finding.

(4) At the conclusion of the investigation, a report shall be prepared and filed with the executive director and chairman of the commission detailing the findings of the investigation.

(5) If the purse money has been distributed, the stewards shall order the money returned at the conclusion of an investigation finding that a prohibited drug, medication, substance, or metabolic derivative was administered to a horse eligible for purse money.

(6) At the conclusion of testing by the commission laboratory and split sample laboratory, the remaining portion of the samples at the commission laboratory and split samples remaining at the test barn may be retained at a proper temperature at a secure facility approved and chosen by the commission. If a report indicating a positive finding has been issued, the commission shall use its best reasonable [~~best~~]efforts to retain any remaining portion of the sample until legal proceedings have concluded. The commission may freeze samples.

Section 20. Other Prohibited Practices. (1) A drug, medication, or substance shall not be possessed or used by a licensee, or his designee or agent, to a horse within a nonpublic area at a location under the jurisdiction of the commission:

(a) The use of which may endanger the health and welfare of the horse; or

(b) The use of which may endanger the safety of the rider.

(2) Without the prior permission of the commission or its designee, a drug, medication, or substance that has never been approved by the United States[~~U.S.~~] Food and Drug Administration (USFDA) for use in humans or animals shall not be possessed or used at a location under the jurisdiction of the commission. The commission shall determine whether to grant prior permission after consultation with the Equine [~~Research~~] Drug Research Council.

(3) The following blood-doping agents shall not be possessed or used at a location under the jurisdiction of the commission:

(a) Erythropoietin;

(b) Darbepoietin;

(c) Oxyglobin®;

(d) Hemopure®; or

(e) Any substance that abnormally enhances the oxygenation of body tissue.

(4) A treatment, procedure, or therapy shall not be practiced, administered, or applied which may:

(a) Endanger the health or welfare of a horse; or

(b) Endanger the safety of a rider.

(5) Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy shall not be used unless the following conditions are met:

(a) A treated horse shall not race for a minimum of ten (10) days following treatment;

(b) A veterinarian licensed to practice by the commission shall administer the treatment;

(c) The commission veterinarian shall be notified prior to the delivery of the machine on association grounds; and

(d) A report shall be submitted by the veterinarian administering the treatment to the commission veterinarian on the [~~prescribed form within twenty-four (24) hours of treatment. The form to be used is the "~~]Kentucky Horse Racing Commission[~~Authority~~] Veterinary Report of Horses Treated with Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy["] form within twenty-four (24) hours of treatment.

(6) Other than furosemide, an alkalizing substance that could alter the blood serum or plasma pH or concentration of bicarbonates or carbon dioxide in a horse shall not be used within twenty-four (24) hours prior to post time of[~~for~~] the race in which the horse is entered.

(7) Without the prior permission of the commission veterinarian or his [~~or her~~]designee, based on standard veterinary practice for recognized conditions, a nasogastric tube which is longer than six (6) inches shall not be used for the administration of any substance within twenty-four (24) hours prior to [~~the~~]post time of the[~~a~~] race in which the horse is entered.

(8) A blood serum or plasma total carbon dioxide (TCO_2) level shall not exceed 37.0 millimoles per liter in a horse; except no violation shall exist if the TCO_2 level is found to be normal for the horse following the quarantine procedure set forth in Section 21 of this administrative regulation.

(9) A blood gas machine shall not be possessed or used by a person other than an authorized representative of the commission at a location under the jurisdiction of the commission; and

(10) A shock wave therapy machine or radial pulse wave therapy machine shall not be possessed or used by anyone other than a veterinarian licensed by the commission at a location under the jurisdiction of the commission.

Section 21. TCO_2 Testing and Procedures. (1)(a) The stewards or commission veterinarian may order the pre-race[~~prerace~~] or post-race collection of blood specimens[~~samples~~] from a horse to determine the total carbon dioxide concentration in the blood serum or plasma of the horse. The winning horse and other horses, as selected by the stewards, may be tested in each race to determine if there has been a violation of this administrative regulation.

(b) Pre-race[~~Prerace~~] testing shall be done at a[~~the~~] reasonable time, place, and manner directed by the chief state steward in consultation with the commission veterinarian.

(c) A specimen[~~sample~~] consisting of at least two (2) blood tubes shall be taken from a horse to determine the TCO_2 concentration in the blood serum or plasma of the horse. If the commission laboratory determines that the TCO_2 level exceeds thirty-seven (37) millimoles per liter, the executive director of the commission shall be informed of the positive finding.

(d) Split sample testing for TCO_2 may be requested by an owner or trainer in advance of the collection of the specimen[~~samples~~] by the commission veterinarian; however, the collection and testing of a split sample for TCO_2 testing shall be done at a reasonable time, place, and manner directed by the commission veterinarian.

(e) The cost of split sample testing, including the cost of shipping, shall be borne by the owner or the trainer.

(2)(a) If the level of TCO_2 is determined to exceed thirty-seven (37) millimoles per liter and the licensed owner or trainer of the horse certifies in writing to the stewards within twenty-four (24) hours after the notification of the test result that the level is normal for that horse, the owner or trainer may request that the horse be held in quarantine. If quarantine is requested, the licensed association shall make guarded quarantine available for that horse for a period of time to be determined by the stewards, but in no event for more than seventy-two (72) hours.

(b) The expense for maintaining the quarantine shall be borne by the owner or trainer.

(c) During quarantine, the horse shall be retested periodically by the commission veterinarian.

(d) The horse shall not be permitted to race during a quarantine period, but it may be exercised and trained at times prescribed by the licensed association and in a manner that allows monitoring of the horse by a[~~an~~] commission representative.

(e) During quarantine, the horse shall be fed only hay, oats,

and water.

(f) If the commission veterinarian is satisfied that the horse's level of TCO_2, as registered in the original test, is physiologically normal for that horse, the stewards:

1. Shall permit the horse to race; and

2. May require repetition of the quarantine procedure set forth in paragraphs (a) through (f) of this subsection to reestablish that the horse's TCO_2 level is physiologically normal.

Section 22. Postmortem Examination. (1) [~~The commission veterinarian may require a postmortem examination by a qualified designee of the commission of~~]A horse that dies or is euthanized on the grounds of a licensed association or training center[~~destroyed at a location~~] 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 provided in 810 KAR 1:012, Section 14.

(2) The commission [~~or its designee shall coordinate with the trainer or owner to determine and address any insurance requirements.~~

~~(3) The commission veterinarian may take possession of a horse that dies or is destroyed for postmortem examination. The commission veterinarian may submit biologic samples collected during a postmortem examination for analysis. Upon completion of the postmortem examination, the remains may be returned to the owner or disposed of at the owner's option and expense. The commission~~]shall bear the cost of an autopsy that is required by the commission.

(3)[~~(4)~~] The presence of a prohibited drug, medication, substance, or metabolic derivative thereof in a specimen collected during the postmortem examination of a horse may constitute a violation of this administrative regulation.

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

(a) "Veterinary[~~Veterinarian~~] Report of Horses Treated to be Submitted Daily", KRC-2 [~~KHRA- 2"~~], 8/97;

(b) "Split Sample Chain of Custody Form", KHRC 18-01, 4/12[~~"Kentucky Horse Racing Authority Uniform Drug and Medication Classification Schedule", (8-08)~~];

(c) "Kentucky Horse Racing Commission[~~Authority~~] Veterinary Report of Horses Treated with Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy", KHRC 18-02, 4/12[~~", 12/05~~]; and

(d) [~~"Split Sample Chain of Custody Form", 12/05; and~~

~~(e)~~] "Therapeutic AAS Administration Form", KHRC 18-03, (4/12)[~~", 9/08~~].

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

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

APPROVED BY AGENCY: May 10, 2012

FILED WITH LRC: May 11, 2012 at 3 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held be held on June 27, 2012 at 9:00 a.m., at The Red Mile, The Red Mile Clubhouse, 1200 Red Mile Road, Lexington, Kentucky 40504. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by June 20, 2012, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 2, 2012. 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 governs the administration of drugs, medications and substances to thoroughbred horses racing at licensed racing associations in Kentucky. It identifies both permitted and prohibited substances and establishes protocols for the administration of the permitted substances. It establishes procedures for the collection, storage and shipment of biologic specimens that will be tested for regulated substances, as well as the chain of custody and testing protocols for those biologic specimens. The regulation defines a trainer's responsibilities, making the trainer responsible for the condition of any horse in his or her care. It establishes reporting requirements for veterinarians who are treating racehorses in Kentucky and creates a Veterinarian's List, which documents all horses that the commission veterinarian determines to be unfit for racing. Finally, it establishes procedures for the post-mortem examination of horses that die or are euthanized on the grounds of a licensed racing association or training center under the jurisdiction of the commission.

(b) The necessity of this administrative regulation: This regulation is necessary to fulfill the statutory mandates found in KRS 230.215(2) and KRS 230.240(2). KRS 230.215(2) states that, [I]t is hereby declared the purpose and intent of this chapter in the interest of the public health, safety, and welfare, to vest in the racing commission forceful control of horse racing in the Commonwealth with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth…

KRS 230.240(2) states, The racing commission shall promulgate administrative regulations for effectively preventing the use of improper devices, and restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. The racing commission may acquire, operate, and maintain, or contract for the maintenance and operation of, a testing laboratory and related facilities, for the purpose of saliva, urine, or other tests, and to purchase supplies and equipment for and in connection with the laboratory or testing processes…

Without this administrative regulation, the commission would be unable to effectively fulfill the statutory mandates set forth above.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) mandates that the commission establish the conditions under which thoroughbred racing and pari-mutuel wagering thereon shall be conducted in Kentucky and charges it to, "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth." KRS 230.240(2) further requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race.

This regulation both identifies regulated substances and establishes protocols by which the commission can collect biologic specimens from horses and test those specimens for drugs or stimulants. In so doing, it allows the commission to "maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth." See KRS 230.215.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: KRS 230.215 requires the commission to regulate horse racing in Kentucky "free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth." KRS 230.240 requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race.

This administrative regulation provides the specific policies, prohibitions, protocols and procedures necessary to fulfill the statutory mandates set forth in KRS 230.215 and KRS 230.240. It also provides notice to owners and trainers regarding what medications and practices are, or are not, permitted.

(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 addition to a number of technical and formatting changes, the amendment:

- Provides new definitions to make the regulation consistent with other administrative regulations in Title 810 KAR, Chapter 1;
- Eliminates the requirement that the commission prove that a prohibited substance affected the performance of a horse as a condition precedent to a finding that there has been a violation of the regulation;
- Requires race-day furosemide to be administered by the commission veterinarian, unless the commission veterinarian is unavailable to perform the administration, in which case the commission shall contract with a private veterinarian to perform the administration;
- Amends the rules regarding eligibility to race on or off furosemide to allow greater flexibility to owners and trainers;
- Reduces the primary and secondary thresholds for phenylbutazone;
- Adds a secondary threshold for flunixin;
- Eliminates the requirement that a trainer with a horse shipping in from out of state certify that he or she had or did not have control of a horse for sixty days prior to the race in which the horse is entered to run; and
- Provides that 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 as provided in 810 KAR 1:012, Section 14.

(b) The necessity of the amendment to this administrative regulation: The landscape of horse racing – as it pertains to the use of stimulants, drugs and other improper substances – is constantly changing and the commission must periodically amend its administrative regulations to keep pace with these developments. This amendment reflects industry-wide policy changes and is necessary to ensure that the commission's regulatory framework accounts for recent developments in medical science.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which thoroughbred racing and parimutuel wagering thereon shall be conducted in Kentucky and charges it to, "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth." KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This amendment specifically addresses the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race in Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: The amendment allows the commission to keep pace with developments in the medical and pharmaceutical industries. It also ensures that Kentucky's regulatory framework is consistent with industry wide trends in this area which results in greater uniformity of rules among various racing jurisdictions.

(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 many of the commission's roughly 18,000 licensees, either directly or indirectly, including owners, trainers and their employees; veterinarians; jockeys; racing associations and their employees; and the commission itself. It will directly affect owners, trainers and veterinarians, who will have to comply with the amended regulation. It will affect the commission which is charged with administering and enforcing the rules. It will affect the commission's official laboratory, which will be required to perform and report testing consistent with the amendment. It will indirectly affect the racing associations and wagering patrons, who will have increased confidence that thoroughbred racing in Kentucky is "free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices." It will affect jockeys, exercise riders, grooms and any other persons who have direct contact with the racehorses, in that the amendment provides a strong deterrent to putting their health, safety and welfare at risk through the use of prohibited substances.

(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 owners and trainers and practicing veterinarians will be required to:

- Comply with the adjusted threshold levels for certain drugs;
- State whether a horse will or will not run with furosemide at the time the horse is entered in a race; and
- Cease using adjunct bleeder medications on race day.
- The commission will become responsible for the administration of furosemide on race day and will be responsible for enforcing the amendments to the medication rules.
- The remainder of the entities identified in question (3) will not be required to take any action to comply with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The owners and trainers will not bear any additional expenses as a result of this amendment, and will likely see some cost savings as it relates to the administration of furosemide on race day. Because the commission will be responsible for the administration of furosemide, the owners and trainers will only be responsible for the actual cost of administration. The commission will determine the cost of furosemide after consulting with industry representatives and reviewing the prevailing costs of veterinary services and supplies at the time the determination is made. Unlike private veterinarians, this cost will be a straight pass-through and will not be a source of revenue.

The commission will need to hire additional veterinarians to handle the administration of furosemide on race day. This cost will be offset by the cost of administration assessed to the owner or trainer requesting that furosemide be administered.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Each of the entities identified in question 3 will benefit from a more thorough, up-to-date and flexible medication policy.

- All licensees, including owners, trainers and racing associations, and the commission will benefit from the wagering public's increased confidence in the integrity of horse racing;
- Owners and trainers will have greater flexibility with respect to the use of furosemide and most likely will see a reduction in its cost;
- Any individuals who come into contact with racehorses competing in Kentucky will benefit because the regulation provides a strong deterrent to putting their health, safety and welfare at risk through the use of prohibited substances; and
- Owners and trainers will benefit from the knowledge that they are competing on a level playing field with each other and will have increased confidence that their competitors are not gaining any advantage through the use of improper drugs or stimulants or other improper acts.

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

(a) Initially: The commission will need to hire veterinarians and an administrative assistant to handle the administration of furo-

semide on race day. However, the cost of administration will offset the expense of the additional employees.

(b) On a continuing basis: The commission will need to hire veterinarians and an administrative assistant to handle the administration of furosemide on race day. However, the cost of administration will offset the expense of the additional employees.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The drug testing described in the regulation is paid for by the racing associations. The cost of administering furosemide on race day will be assessed to the owner or trainer requesting the administration.

(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 an initial expense to hire veterinarians to administer furosemide on race days. However, this expense will be offset by the money received for the cost of the administration.

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

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to the affected 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. Kentucky Revised Statutes 230.215, 230.225, 230.260, 230.290, 230.310, 230.320.

4. Estimate the effect of this administrative regulation on the expenditures and revenues 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 will be an initial expense to hire veterinarians to administer furosemide on race days. However, this expense will be offset by the money received from the cost of the administration.

(d) How much will it cost to administer this program for subsequent years? There will be an initial expense to hire veterinarians to administer furosemide on race days. However, this expense will be offset by the money received from the cost of the administration.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amendment)

810 KAR 1:028. Disciplinary measures and penalties.

RELATES TO: KRS 230.215[~~(2)~~], 230.260[~~(1), (3)~~], 230.265[~~(2)~~], 230.290[~~(2)~~], 230.300, 230.320[~~(1)~~], 230.361[~~(1), EO 2008-668~~]

STATUTORY AUTHORITY: KRS 230.215[~~(2)~~], 230.240[~~(2)~~], 230.260[~~(3), EO 2008-668~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260(3) authorizes the commission[~~Authority~~] to promulgate necessary and reasonable administrative regulations under which racing shall be conducted in Kentucky. [~~EO 2008-668, effective July 3, 2008, established the Kentucky Horse Racing Commission and transferred all authority, functions, and responsibilities of the Kentucky Horse Racing Authority to the commission.~~]This administrative regulation establishes the penalty structure for rule violations and also establishes disciplinary powers and duties of the stewards and the commission.

Section 1. Definitions. (1) "Associated person" means the spouse of an inactive person, or a companion, family member, employer, employee, agent, partnership, partner, corporation, or other entity whose relationship, whether financial or otherwise, with an inactive person would give the appearance that the other person or entity would care for or train a horse or perform veterinarian services on a horse for the benefit, credit, reputation, or satisfaction of the inactive person.

(2) "Class A drug" means a drug, medication, or substance classified as a Class A drug, medication, or substance in the schedule.

(3) "Class B drug" means a drug, medication, or substance classified as a Class B drug, medication, or substance in the schedule.

(4) "Class C drug" means a drug, medication, or substance classified as a Class C drug, medication, or substance in the schedule.

(5) "Class D drug" means a drug, medication, or substance classified as a Class D drug, medication, or substance in the schedule.

(6) "Companion" means a person who cohabits with or shares living accommodations with an inactive person.

(7) "Inactive person" means a trainer or veterinarian who has his or her license denied or suspended or revoked for thirty (30) or more days pursuant to 810 KAR Chapter 1 or KRS Chapter 230.[~~this administrative regulation pertaining to:~~

~~(a) A violation involving Class A drugs;~~

~~(b) A second or third violation involving a Class B drug in which the person's licensing privileges have been suspended or revoked for six (6) months or longer;~~

~~(c) A third or subsequent violation of 810 KAR 1:018 for an excessive TCO_2 level; or~~

~~(d) A third or subsequent violation of 810 KAR 1:018 involving shock wave or blood gas machines.~~]

(8) "NSAID" means a non-steroidal anti-inflammatory drug.

(9) "Primary threshold" means the thresholds for phenylbutazone, flunixin, and ketoprofen provided in 810 KAR 1:018, Section 8(1)(a), (b), and (c), respectively.

(10) "Schedule" means the Kentucky Horse Racing Commission[~~Authority~~] Uniform Drug, Medication, and Substance[~~and Medication~~] Classification Schedule as provided in 810 KAR 1:040.

(11) "Secondary threshold" means the thresholds for phenylbutazone and flunixin provided in 810 KAR 1:018, Section 8(3)(b) and (c), respectively.

(12)[~~(9)~~] "Withdrawal guidelines" means ["]the Kentucky Horse Racing Commission Withdrawal Guidelines [~~for~~]Thoroughbreds, Quarter Horse, Appaloosa and Arabians as provided in 810 KAR 1:040.["]

Section 2. General Provisions. (1) An alleged violation of the provisions of KRS Chapter 230 relating to thoroughbred racing or [~~Title~~] 810 KAR Chapter 1 shall be adjudicated in accordance with 810 KAR 1:029, KRS Chapter 230, and KRS Chapter 13B.

(2) If a drug, medication, or substance is found to be present in a pre-race[~~prerace~~] or post-race[~~postrace~~] sample or possessed or used by a licensee at a location under the jurisdiction of the commission that is not classified in the schedule, the commission may establish a classification after consultation with either or both of the Association of Racing Commissioners International and the Racing and Medication Testing Consortium or their respective successors[~~successor~~].

(3) The stewards and the commission shall consider any mitigating or aggravating circumstances properly presented when assessing penalties pursuant to this administrative regulation. A licensee may provide evidence to the stewards or the commission that the licensee complied fully with the withdrawal guidelines as a mitigating factor.

(4) The commission may suspend or revoke the commission-issued license of an owner, trainer, veterinarian, or other licensee.

(5) A licensee whose license has been suspended or revoked in any racing jurisdiction or a horse that has been deemed ineligible to race in any racing jurisdiction[~~suspended~~], shall be denied access to locations under the jurisdiction of the commission during the term of the suspension or revocation.

(6) A suspension or revocation shall be calculated in Kentucky racing days, unless otherwise specified by the stewards or the commission in a ruling or order.

(7) A person assessed any penalty, including a written warning,[~~a penalty~~] pursuant to this administrative regulation shall have his or her name and the terms of his or her penalty placed on the official Web site of the commission and the Association of Racing Commissioners International, or its successor. If an appeal is pending, that fact shall be so noted.

(8) A horse administered a substance in violation of 810 KAR 1:018 may be required to pass a commission-approved examination pursuant to 810 KAR 1:012, Section 10, or be placed on the veterinarian's list pursuant to 810 KAR 1:018, Section 18.

(9)(a) A claimed horse may be tested for the presence of prohibited substances if the claimant requests the test when the claim form is completed and deposited in the association's claim box. The claimant shall bear the costs of the test. The results of the test shall be reported to the chief state steward.

(b) A person who claims a horse may void the claim if the post-race test indicates the horse had Class A, B, or C drug in its system, or a TCO2 level exceeding 37.0 millimoles per liter. If the claim is voided, the person claiming the horse shall then be entitled to reimbursement from the previous owner of all reasonable costs associated with the claiming process and the post-race testing, including, but not limited to, the costs of transportation, board, training, veterinary, testing, and any other customary or associated costs or fees.

(c) While awaiting test results, a claimant:

1. Shall exercise due care in maintaining and boarding a claimed horse; and

2. Shall not materially alter a claimed horse.

(10)[~~(8)~~] To protect the racing public and ensure the integrity of racing in Kentucky[~~the commonwealth~~], a trainer whose penalty for a Class A violation or for a Class B third offense violation has not been fully and finally adjudicated may, if stall space is available, be required to house a horse that the trainer has entered in a race in a designated stall for the twenty-four (24) hour period prior to post time of the race in which the horse is entered. If the stewards require the trainer's horse to be kept in a designated stall, there shall be twenty-four (24) hour surveillance of the horse by the association, and the cost shall be borne by the trainer.

(11)[~~(9)~~] A veterinarian who administers, or is a party to, or facilitates the administration of, or is found to be responsible for the administration of a Class A drug to a horse, in violation of 810 KAR 1:018, [~~Section 20,~~]or who has engaged in prohibited practices in violation of 810 KAR 1:018, shall be reported to the Kentucky Board of Veterinary Examiners and the state licensing Board of Veterinary Medicine by the stewards.

(12)[~~(10)~~] An administrative action or the imposition of penalties pursuant to this administrative regulation shall not constitute a bar or be considered jeopardy to prosecution of an act that violates the criminal statutes of Kentucky.

(13)[~~(11)~~] If a person is charged with committing multiple or successive overages involving a Class C or D drug, the stewards or the commission may charge the person with only one (1) offense[~~,~~] if the person demonstrates that he or she was not aware that overages were being administered[~~,~~] because the positive test results showing the overages were unavailable to the person charged. In this case, the person alleging that he or she was not aware of the overages shall bear the burden of proving that fact to the stewards or the commission.

Section 3. Prior Offenses. [~~(1)~~]A prior offense occurring in Kentucky or any other racing jurisdiction shall be considered[~~, in accordance with the requirements of this section,~~] by the stewards and by the commission in assessing penalties. [~~A prior offense occurring in another racing jurisdiction may be considered by the stewards and the commission in assessing penalties.~~]The stewards shall attach to a penalty judgment a copy of the offender's prior record containing violations that were committed both inside and outside of Kentucky. [~~(2) A prior offense occurring before September 7, 2005 shall not be considered.~~

~~(3) A prior offense involving a Class C drug or Class D drug may be considered as a prior offense, if the act that constituted the offense was committed after September 7, 2005 and within one (1) year of the offense for which the person stands charged.~~

~~(4) A prior offense involving a Class A drug or Class B drug may be considered as a prior offense, if the act that constituted the offense was committed after September 7, 2005.~~

~~(5) A prior offense shall not be considered for purposes of enhancing a penalty if the drug, medication, or substance that was the subject of the prior offense was of a lower class, pursuant to the schedule, than the drug, medication, or substance that is the subject of the offense for which the person stands charged.~~]

Section 4. Penalties for Class A, B, C, and D Drug Violations and NSAID and Furosemide Violations. (1) Class A drug. A horse that tests positive for a Class A drug shall be disqualified and listed as unplaced and all purse money shall be forfeited. In addition, a licensee who administers, or is a party to or responsible for administering a Class A drug to a horse shall be subject to some or all of the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case[~~horse, in violation of 810 KAR 1:018, shall be subject to the following penalties~~]:

(a) For a first offense:

1. A minimum one (1) year suspension, absent mitigating circumstances. The presence of aggravating factors may be used to impose a maximum of a three (3) year suspension or revocation[~~of licensing privileges from zero to three (3) years as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case~~]. Section 8[~~7~~] of this administrative regulation shall apply to the person whose licensing privileges have been suspended or revoked; and[~~.~~]

2. [~~The licensee whose licensing privileges may be suspended or revoked, and the commission may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:~~

~~a.~~]Payment of a fine of $5,000 to $10,000[~~; or~~

~~b. Forfeiture of purse money won~~].

(b) For a second lifetime offense in any racing jurisdiction:

1. A minimum three (3) year suspension or revocation, absent mitigating circumstances. The presence of aggravating factors may be used to impose a maximum of a five (5) year suspension or revocation.[~~A suspension or revocation of licensing privileges from three (3) years to five (5) years as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case.~~] Section 8[~~7~~] of this administrative regulation shall apply to the person whose licensing privileges have been suspended or revoked; and[~~.~~]

2. [~~The licensee whose licensing privileges may be suspended or revoked, and the commission may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:~~

~~a.~~]Payment of a fine of $10,000 to $20,000[~~; or~~

~~b. Forfeiture of purse money won~~].

(c) For a third lifetime offense in any racing jurisdiction:

1. A minimum five (5) year suspension or revocation, absent mitigating circumstances. The presence of aggravating factors may be used to impose a maximum of a lifetime revocation.[~~A suspension or revocation of licensing privileges for not less than five (5) years as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case. A revocation of licensing privileges may be permanent.~~] Section 8[~~7~~] of this administrative regulation shall apply to the person whose licensing

privileges have been suspended or revoked; and[.]

2. [The licensee whose licensing privileges may be suspended or revoked, and the commission may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

a.]Payment of a fine of $20,000 to $50,000[; or

b. Forfeiture of purse money won].

(d) Horse ineligible.[Suspension of owner's horse.] A horse that tests positive for[administered] a Class A drug [in violation of 810 KAR 1:018]shall be ineligible to race[subject to suspension from racing] in Kentucky as follows:

1. For a first offense, the horse shall be ineligible[a suspension] from zero days to sixty (60) days;

2. For a second offense in a horse owned by the same owner, the horse shall be ineligible[offense, a suspension] from sixty (60) days to 180 days; and[or]

3. For a third offense in a horse owned by the same owner, the horse shall be ineligible[offense, a suspension] from 180 to 240 days.

(2) Class B drug. A horse that tests positive for a Class B drug shall be disqualified and listed as unplaced and all purse money shall be forfeited. In addition, a licensee who administers, or is a party to or responsible for administering a Class B drug to a horse shall be subject to some or all of the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case[horse, in violation of 810 KAR 1:018 or more than one (1) NSAID to a horse, in violation of 810 KAR 1:018, shall be subject to the following penalties]:

(a) For a first offense:

1. A minimum fifteen (15) day suspension, absent mitigating circumstances. The presence of aggravating factors may be used to impose a maximum of a sixty (60) day suspension or revocation. Section 8 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked; and[A suspension or revocation of licensing privileges from zero to sixty (60) days as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case.]

2. [The licensee whose licensing privileges may be suspended or revoked and the commission may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

a.]Payment of a fine of $500 to $1,000[; or

b. Forfeiture of purse money won].

(b) For a second offense within a 365-day period in any racing jurisdiction:

1. A minimum sixty (60) day suspension, absent mitigating circumstances. The presence of aggravating factors may be used to impose a maximum of a 180 day suspension.[A suspension or revocation of licensing privileges from one (1) month to six (6) months as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case.] Section 8[7] of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked; and[for six (6) months.]

2. [The licensee whose licensing privileges may be suspended or revoked, and the commission may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

a.]Payment of a fine of $1,000 to $2,500[; or

b. Forfeiture of purse money won].

(c) For a third offense within a 365-day period in any racing jurisdiction:

1. A minimum 180 day suspension, absent mitigating circumstances. The presence of aggravating factors may be used to impose a maximum of a one (1) year suspension.[A suspension or revocation of licensing privileges from two (2) months to one (1) year as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case.] Section 8[7] of this administrative regulation shall apply to the person whose licensing privileges have been suspended or revoked; and[for six (6) months or longer.]

2. [The licensee whose licensing privileges may be suspended or revoked, and the commission may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

a.]Payment of a fine of $2,500 to $5,000[; or

b. Forfeiture of purse money won].

(d) Horse ineligible. [Suspension of owner's horse.]A horse that tests positive for[administered] a Class B drug shall be ineligible to race[, in violation of 810 KAR 1:018, or more than one (1) NSAID, in violation of 810 KAR 1:018, shall be subject to suspension from racing] in Kentucky as follows:

1. For a first offense, the horse shall be ineligible from zero days to sixty (60) days[no suspension];

2. For a second offense in a horse owned by the same owner, the horse shall be ineligible[offense, a suspension] from[zero to] sixty (60) days to 180 days; and[or]

3. For a third offense in a horse owned by the same owner, the horse shall be ineligible from 180 days to 240 days[offense, a suspension from sixty (60) to 180 days].

(3) Class C drug or overage of either permitted NSAID flunixin or ketoprofen[one (1) permitted NSAID].

(a)The following licensees shall be subject to some or all of the penalties in paragraphs (b) through (d) of this subsection as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:

1. A licensee who administers, or is a party to or responsible for administering a Class C drug to a horse, in violation of 810 KAR 1:018; and

2. A licensee who is responsible for an overage of either permitted NSAID flunixin or ketoprofen[one (1) permitted NSAID] in the following concentrations[amounts] in violation of 810 KAR 1:018:

a. Flunixin, greater than 100 ng/ml; or

b. Ketoprofen, greater than 50 ng/ml.[Phenylbutazone (>10 mcg/ml);

b. Flunixin (>100 ng/ml); or

c. Ketoprofen (>50 ng/ml).]

(b) For a first offense:

1. A suspension or revocation of licensing privileges from zero days to ten (10) days;[as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case.]

2. [The licensee whose licensing privileges may be suspended or revoked, and the commission may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

a.]Payment of a fine of $250 to $500; and

3.[or b.] Forfeiture of purse money won.

(c) For a second offense within a 365-day period:

1. A suspension or revocation of licensing privileges from ten (10) days to thirty (30) days;[as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case.]

2. [The licensee whose licensing privileges may be suspended or revoked, and the commission may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

a.]Payment of a fine of $500 to $1,000; and

3.[or b.] Forfeiture of purse money won.

(d) For a third offense within a 365-day period:

1. A suspension or revocation of licensing privileges from thirty (30) days to sixty (60) days;[as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case.]

2. [The licensee whose licensing privileges may be suspended or revoked, and the commission may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

a.]Payment of a fine of $1,000 to $2,500; and

3.[or b.] Forfeiture of purse money won.

(e) Notwithstanding the above, a licensee who administers, or is a party to or responsible for an overage of either permitted NSAID flunixin or ketoprofen in the following concentrations shall be subject to some or all of the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:

1. Flunixin (21-99 ng/ml); or

2. Ketoprofen (11-49 ng/ml).

a. For a first offense:

(i) A suspension or revocation of licensing privileges from zero days to five (5) days; and

(ii) Payment of a fine of $250 to $500.

b. For a second offense within a 365-day period:

(i) A suspension or revocation of licensing privileges from five (5) days to ten (10) days; and

(ii) Payment of a fine of $500 to $1,000.

c. For a third offense within a 365-day period:

(i) A suspension or revocation of licensing privileges from ten (10) days to fifteen (15) days.

(ii) Payment of a fine of $1,000 to $2,500; and

(iii) Forfeiture of purse money won.

(4) Overage of Permitted NSAID Phenylbutazone.

(a) A licensee who administers, or is a party to or responsible for an overage of the permitted NSAID phenylbutazone in a concentration of greater than 2.0 mcg/ml and less than 5.1 mcg/ml shall be subject the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:

1. For a first offense:

a. Minimum penalty of a written warning up to a maximum penalty of a $500 fine; and

b. The horse may not be eligible to enter until it has been approved for racing by the commission veterinarian.

2. For a second offense within a 365-day period:

a. Minimum penalty of a written warning up to a maximum penalty of a $750 fine; and

b. The horse shall not be eligible to enter until it has been approved for racing by the commission veterinarian.

3. For a third offense within a 365-day period:

a. A fine of $500 to $1,000;

b. Forfeiture of purse money won;

c. The horse shall be disqualified and listed as unplaced; and

d. The horse shall not be eligible to enter until it has been approved for racing by the commission veterinarian.

(b) A licensee who administers, or is a party to or responsible for an overage of the permitted NSAID Phenylbutazone in a concentration of greater than 5.0 mcg/ml shall be subject to the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:

1. For a first offense, payment of a fine from $1,000 to $1,500; and

2. For a second offense within a 365-day period:

a. Payment of a fine from $1,500 to $2,500;

b. A suspension of licensing privileges for fifteen (15) days, unless the stewards or the commission finds mitigating circumstances;

c. Forfeiture of purse money won; and

d. The horse shall be disqualified and listed as unplaced.

3. For a third offense within a 365-day period:

a. A fine of $2,500 to $5,000;

b. A suspension of licensing privileges for thirty (30) days, unless the stewards or the commission finds mitigating circumstances;

c. Forfeiture of purse money won; and

d. The horse shall be disqualified and listed as unplaced.

(5)[~~(4) Certain overages of Permitted NSAIDs and~~] Furosemide Violations.

(a) The following licensees shall be subject to some or all of the following[~~the~~] penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case[~~in paragraphs (b) through (d) of this subsection~~]:

1. [~~Notwithstanding Section 4(3) of this administrative regulation, a licensee who administers, or is a party to or responsible for administering an overage of one (1) permitted NSAID in the following amounts in violation of 810 KAR 1:018:~~

~~a. Phenylbutazone (5.1-9.9 mcg/ml);~~

~~b. Flunixin (21-99ng/ml); or~~

~~c. Ketoprofen (11-49 ng/ml);~~]

~~2.~~]A licensee who administers, or is party to or responsible for administering an overage of furosemide in a concentration greater than[~~an amount in excess of~~] 100 ng/ml; and

2.[~~3.~~] A licensee who has not administered furosemide when notice has been made that the horse shall race on furosemide pursuant to 810 KAR 1:018, Section 7[~~ has been identified as a horse on furosemide~~].

(b) For a first offense:

1. A suspension or revocation of licensing privileges from zero days to five (5) days; and[~~as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case.~~]

2. Payment[~~The licensee whose licensing privileges may be suspended or revoked and the commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment~~] of a fine of $250 to $500.

(c) For a second offense within a 365-day period:

1. A suspension or revocation of licensing privileges from five (5)[~~zero~~] days to ten (10) days; and[~~as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case.~~]

2. Payment[~~The licensee whose licensing privileges may be suspended or revoked and the commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment~~] of a fine of $500 to $1,000.[~~;~~]

(d) For a third offense within a 365-day period:

1. A suspension or revocation of licensing privileges from ten (10)[~~zero~~] days to fifteen (15) days.[~~as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case.~~]

2. [~~The licensee whose licensing privileges may be suspended or revoked, and the commission may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:~~

~~a.~~]Payment of a fine of $1,000 to $2,500; and

3.[~~or b.~~] Forfeiture of purse money won.

(6) Multiple NSAIDs. A licensee who is responsible for an overage of two (2) of the permitted NSAIDs flunixin, ketoprofen, or phenylbutazone shall be subject to some or all of the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:

(a) For violations where the concentrations of both of the two (2) permitted NSAIDs is above the primary thresholds:

1. For a first offense:

a. A suspension or revocation of licensing privileges from zero days to sixty (60) days. Section 8 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked;

b. Payment of a fine of $500 to $1,000; and

c. Forfeiture of purse money won.

2. For a second offense within a 365-day period:

a. A suspension or revocation of licensing privileges from sixty (60) days to 180 days. Section 8 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked;

b. Payment of a fine of $1,000 to $2,500; and

c. Forfeiture of purse money won.

3. For a third offense within a 365-day period:

a. A suspension or revocation of licensing privileges from 180 days to one (1) year. Section 8 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked;

b. Payment of a fine of $2,500 to $5,000; and

c. Forfeiture of purse money won.

(b) For violations where the concentration of one (1) of the two (2) permitted NSAIDs is above the primary threshold and one (1) of the two (2) permitted NSAIDs is above the secondary threshold:

1. For a first offense:

a. A suspension or revocation of licensing privileges from zero days to fifteen (15) days. Section 8 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked;

b. Payment of a fine of $250 to $750; and

c. Forfeiture of purse money won.

2. For a second offense within a 365-day period:

a. A suspension or revocation of licensing privileges from fifteen (15) days to thirty (30) days. Section 8 of this administrative

regulation shall apply to a person whose licensing privileges have been suspended or revoked;

b. Payment of a fine of $750 to $1,500; and

c. Forfeiture of purse money won.

3. For a third offense within a 365-day period:

a. A suspension or revocation of licensing privileges from thirty (30) days to sixty (60) days. Section 8 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked;

b. Payment of a fine of $1,500 to $3,000; and

c. Forfeiture of purse money won.

(c) For violations where the concentrations of both of the two (2) permitted NSAIDs are below the primary threshold and both of the two (2) permitted NSAIDs are above the secondary threshold:

1. For a first offense:

a. A suspension or revocation of licensing privileges from zero days to five (5) days. Section 8 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked; and

b. Payment of a fine of $250 to $500.

2. For a second offense within a 365-day period:

a. A suspension or revocation of licensing privileges from five (5) days to ten (10) days. Section 8 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked; and

b. Payment of a fine of $500 to $1,000.

3. For a third offense within a 365-day period:

a. A suspension or revocation of licensing privileges from ten (10) days to fifteen (15) days. Section 8 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked; and

b. Payment of a fine of $1,000 to $2,500.

(7)[~~(5)~~] Class D Drug.

(a) The penalty for a first violation involving a Class "D" drug shall be a written warning to the trainer and owner.

(b) For multiple violations involving a Class "D" drug the licensee may be subject to a suspension of licensing privileges from zero days to five (5) days and a fine of no more than $250 as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case. [~~(c) The licensee whose licensing privileges may be suspended, and the commission may enter into an agreement to mitigate the suspension by agreeing to payment of a fine of no more than $250.~~]

Section 5. Out-of-Competition Testing. Notwithstanding the provisions of Section 4 of this administrative regulation, the following penalties shall apply to violations of 810 KAR 1:110:

(1) For a first offense:

(a) A revocation of licensing privileges for a period of five (5) to ten (10) years as deemed appropriate by the commission in keeping with the seriousness of the violation and facts of the case;

(b) A fine of up to $50,000 as deemed appropriate by the commission in keeping with the seriousness of the violation and facts of the case; and

(c) The forfeiture of purse money earned at a licensed association by a horse in which the presence of a substance described in 810 KAR 1:110, Section 2, was detected, between the time that the specimen was collected and the commission's determination of an actionable finding.

(2) For a second offense:

(a) Permanent revocation of licensing privileges; and

(b) The forfeiture of purse money earned at a licensed association by a horse in which the presence of a substance described in 810 KAR 1:110, Section 2, was detected, between the time that the specimen was collected and the commission's determination of an actionable finding.

(3) Any licensee who has his license revoked for a violation of this administrative regulation shall go before the license review committee before being eligible for a new license.

(4) The horse in which the presence of a substance described in 810 KAR 1:110, Section 2, was detected shall be barred from racing in Kentucky and placed on the veterinarian's list, and the steward's list, for a period of 180 days and shall remain barred from racing in Kentucky until the horse is determined by the commission to test negative for any substance described in 810 KAR 1:110, Section 2, and is approved for racing by the commission veterinarian and the chief state steward.

(5) The horse in which the presence of a substance described in 810 KAR 1:110, Section 2, was detected remains subject to the requirements of subsection (4) of this section upon sale or transfer of the horse to another owner or trainer before the expiration of 180 days; and until the horse is determined by the commission to test negative for any substance described in 810 KAR 1:110, Section 2, and is approved for racing by the commission veterinarian and the chief state steward.

Section 6. TCO2 penalties. A person who violates or causes the violation of 810 KAR 1:018, Section 20(6), (7), or (8)[~~Section 20 (6), (7) or (8) of 810 KAR 1:018~~] shall be subject to one (1) or more of the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:

(1) For a first offense:

(a) A suspension or revocation of licensing privileges from zero days to three (3) months;[~~ as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case.~~]

(b) [~~The licensee whose licensing privileges may be suspended or revoked, and the commission may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:~~

~~1.~~]Payment of a fine of $1,000 to $1,500; and[~~or~~]

(c)[~~2.~~] Forfeiture of purse money won.

(2) For a second offense:

(a) A suspension or revocation of licensing privileges from three (3) months to six (6) months;[~~as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case.~~]

(b) [~~The licensee whose licensing privileges may be suspended or revoked, and the commission may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:~~

~~1.~~]Payment of a fine of $1,500 to $3,000; and[~~or~~]

(c)[~~2.~~] Forfeiture of purse money won.

(3) For a third offense:

(a) A suspension or revocation of licensing privileges from six (6) months to one (1) year;[~~as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case.~~]

(b) [~~The licensee whose licensing privileges may be suspended or revoked, and the commission may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:~~

~~1.~~]Payment of a fine of $3,000 to $5,000; and

(c)[~~or 2.~~] Forfeiture of purse money won.

(4) For subsequent offenses:

(a) A suspension or revocation of licensing privileges from one (1) year up to a lifetime license revocation; and[~~as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case.~~]

(b) [~~The licensee whose licensing privileges may be suspended or revoked, and the commission may enter into an agreement to mitigate the suspension or revocation by agreeing to~~] Forfeiture of purse money won.

(5) Horse ineligible. A horse that registers a TCO2 level in violation of 810 KAR 1:018, Section 20(6), (7), or (8) shall be ineligible to race in Kentucky as follows:

(a) For a first offense, no period of ineligibility;

(b) For a second offense in the same horse, the horse shall be ineligible from fifteen (15) days to sixty (60) days;

(c) For a third offense in the same horse, the horse shall be ineligible from sixty (60) days to 180 days; and

(d) For a fourth offense in the same horse, the horse shall be ineligible from 180 days to one (1) year.[~~Suspension of owner's horse. A horse that registers a TCO2 level in violation of 810 KAR 1:018 shall be subject to suspension from racing in Kentucky as follows:~~

~~(a) For a first offense, no suspension;~~

~~(b) For a second offense, a suspension from fifteen (15) days to sixty (60) days;~~

~~(c) For a third offense, a suspension from sixty (60) days to 180 days; and~~

~~(d) For a fourth offense, a suspension from eight (8) months to one (1) year.~~]

Section 7[~~6~~]. Shock Wave Machine and Blood Gas Machine Penalties. A person who violates or causes the violation of 810 KAR 1:018, Section (5), (9), or (10),[~~Section 20 (5) (a), 19(5)(b), 19(9) or 19(10) of 810 KAR 1:018~~] shall be subject to some or all of the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case.

(1)[~~penalties: (a)~~] For a first offense:

(a)[~~1.~~] A suspension or revocation of licensing privileges from one (1) month to three (3) months;

(b) Payment[~~months as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case~~

~~2.The licensee whose licensing privileges may be suspended or revoked, and the commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment~~] of a fine of $1,000 to $5,000; and

(c) Forfeiture of purse money won.

(2)[~~(b)~~] For a second offense:

(a)[~~1.~~] A suspension or revocation of licensing privileges from three (3) months to six (6) months;[~~as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case.~~]

(b) Payment[~~2.The licensee whose licensing privileges may be suspended or revoked, and the commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment~~] of a fine of $5,000 to $10,000; and

(c) Forfeiture of purse money won.

(3)[~~(c)~~] For a third offense:

(a)[~~1.~~] A suspension or revocation of licensing privileges from six (6) months to one (1) year;[~~as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case.~~]

(b) Payment[~~2.The licensee whose licensing privileges may be suspended or revoked, and the commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment~~] of a fine of $10,000 to $20,000; and

(c) Forfeiture of purse money won.

Section 8[~~7~~]. Persons with a Suspended or Revoked License. (1) A person shall not train a horse or practice veterinary medicine for the benefit, credit, reputation, or satisfaction of an inactive person. The partners in a veterinary practice may provide services to horses if the inactive person does not receive a pecuniary benefit from those services.

(2) An associated person of an inactive person shall not:

(a) Assume the inactive person's responsibilities at a location under the jurisdiction of the commission;

(b) Complete an entry form for a race to be held in [~~the Commonwealth of~~]Kentucky on behalf of or for the inactive person or an owner or customer for whom the inactive person has worked; or

(c) Pay or advance an entry fee for a race to be held in [~~the Commonwealth of~~]Kentucky on behalf of the inactive person or owner or customer for whom the inactive person has worked.

(3) An associated person who assumes the responsibility for the care, custody, or control of an unsuspended horse owned (fully or partially), leased, or trained by an inactive person shall not:

(a) Be paid a salary directly or indirectly by or on behalf of the inactive person;

(b) Receive a bonus or any other form of compensation in cash, property, or other remuneration or consideration;

(c) Make a payment or give remuneration or other compensation or consideration to the inactive person or associated person; or

(d) Train or perform veterinarian work for the inactive person or an owner or customer of the inactive person at a location under the jurisdiction of the commission.

(4) A person who is responsible for the care, training, or veterinarian services provided to a horse formerly under the care, training, or veterinarian services of an inactive person shall:

(a) Bill customers directly on his or her bill form for any services rendered at or in connection with any race meeting in [~~the Commonwealth of~~]Kentucky;

(b) Maintain a personal checking account totally separate from and independent of that of the inactive person to be used to pay expenses of and deposit income from an owner or client of the inactive person;

(c) Not use the services, directly or indirectly, of current employees of the inactive person; and

(d) Pay bills related to the care, training, and racing of the horse from a separate and independent checking account. Copies of the invoices for the expenses shall be retained for not less than six (6) months after the date of the reinstatement of the license of the inactive person or the expiration of the suspension of the inactive person's license.

Section 9[~~8~~]. Other Disciplinary Measures. (1) [~~A person who violates 810 KAR 1:018, Section 6, regarding furosemide and adjunct bleeder medication use on race day shall be treated the same as a person who has committed a Class C drug violation.~~

~~(2) A person who violates 810 KAR 1:018, Section 8(3) for administering more than one (1) permissible Non-Steroidal Anti-Inflammatory Drug (NSAID) shall be treated the same as a person who has committed a Class B drug violation.~~

~~(3)~~]A person who violates 810 KAR 1:018, Section 20(2), shall be treated the same as a person who has committed a drug violation of the same class, as determined by the commission after consultation with the Equine [~~Research~~] Drug Research Council.

(2)[~~(4)~~] A person who violates 810 KAR 1:018, Section 20(3) shall be treated the same as a person who has committed a Class A drug violation.

Section 10[~~9~~]. Disciplinary Measures by Stewards. [~~(1)~~]Upon finding a violation or an attempted violation of the provisions of KRS Chapter 230 relating to thoroughbred racing or [~~Title~~] 810 KAR Chapter 1, if not otherwise provided for in this administrative regulation, the stewards may impose one (1) or more of the following penalties:

(a) If the violation or attempted violation may affect the health or safety of the horse or a participant in a race or may affect the outcome of a race, declare a horse or a licensee ineligible to race or disqualify a horse or licensee in a race;

(b) Suspend or revoke a person's licensing privileges for a period of time of not more than five (5) years as may be deemed appropriate by the stewards in keeping with the seriousness of the violation and the facts of the case;[~~or~~]

(c) Cause a person, licensed or unlicensed, found to have interfered with, or contributed toward the interference of the orderly conduct of a race or race meeting, or person whose presence is found by the stewards to be inconsistent with maintaining the honesty and integrity of the sport of horse racing to be excluded or ejected from association grounds or from a portion of association grounds; or[~~.~~]

(d) Payment [~~(2) The licensee whose licensing privileges may be suspended or revoked and the stewards may enter into an agreement to mitigate the suspension or revocation by agreeing to payment~~] of a fine in an amount not to exceed $50,000[~~$5,000~~] as may be deemed appropriate by the stewards in keeping with the seriousness of the violation and the facts of the case.

Section 11.[~~10. (1)~~] Disciplinary measures by the commission. Upon finding a violation or an attempted violation of the provisions of KRS Chapter 230 relating to thoroughbred racing or [~~Title~~] 810 KAR Chapter 1, if not otherwise provided for in this administrative regulation, the commission may impose one (1) or more of the following penalties:

(a) If the violation or attempted violation may affect the health or safety of the horse or a participant in a race or may affect the outcome of a race, declare a horse or a licensee ineligible to race or disqualify a horse or licensee in a race;

(b) Suspend or revoke a person's licensing privileges for a

period of time of not more than five (5) years as may be deemed appropriate by the commission in keeping with the seriousness of the violation;[~~or~~]

(c) Eject or exclude persons from association grounds for a length of time the commission deems necessary; or[~~.~~]

(d) Payment [~~(2)~~] [~~The licensee whose licensing privileges may be suspended or revoked and the commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment~~] of a fine in an amount not to exceed $50,000 as may be deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case. [~~Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "The Kentucky Horse Racing Authority Uniform Drug and Medication Classification Schedule", 9/08; and~~

~~(b) "The Kentucky Horse Racing Commission Withdrawal Guidelines for Thoroughbreds", 09/08.~~

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

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

APPROVED BY AGENCY: May 10, 2012

FILED WITH LRC: May 11, 2012 at 3 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held be held on June 27, 2012 at 9:00 a.m., at The Red Mile, The Red Mile Clubhouse, 1200 Red Mile Road, Lexington, Kentucky 40504. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by June 20, 2012, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 2, 2012. 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 penalties for violations of 810 KAR 1:018 and other regulations and statutes thereby giving licensees and other participants notice of consequences of violations.

(b) The necessity of this administrative regulation: This regulation is necessary to fulfill the statutory mandates found in KRS 230.215(2) and KRS 230.240(2). KRS 230.215(2) states that, [I]t is hereby declared the purpose and intent of this chapter in the interest of the public health, safety, and welfare, to vest in the racing commission forceful control of horse racing in the Commonwealth with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth…

KRS 230.240(2) states, the racing commission shall promulgate administrative regulations for effectively preventing the use of improper devices, and restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race.

Without this administrative regulation, the commission would be unable to fulfill the statutory mandates set forth above.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) mandates that the commission establish the conditions under which thoroughbred racing and pari-mutuel wagering thereon shall be conducted in Kentucky and charges it to, "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth." KRS 230.240(2) further requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This regulation enables the commission to fulfill its statutory mandates by providing a means to enforce its rules and regulations.

Along with 810 KAR 1:018, this regulation allows the commission to "maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth." See KRS 230.215.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 230.215 articulates the commission's statutory mandate to regulate horse racing in Kentucky "free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth." KRS 230.240 requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This regulation enables the commission to fulfill its statutory mandates by providing a means to enforce its rules and regulations.

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

(a) How the amendment will change this existing administrative regulation: In addition to a number of technical changes to the regulation, the amendment:

- Provides new definitions to make the regulation consistent with other regulations in Title 810 KAR, Chapter 1;
- Creates a procedure for a claimed horse to be sampled and for the claim to be voided for certain violations of 810 KAR 1:018;
- Clarifies that the Stewards will consider prior offenses from any racing jurisdiction when assessing penalties;
- Clarifies that the Stewards must consider mitigating and aggravating factors in all cases when assessing penalties.
- Clarifies for all violation levels that the Stewards may impose a fine in lieu of or in addition to a suspension and other penalties as deemed appropriate based on the facts of the case.
- Establishes a penalty structure for certain substances based on the amount of the substance detected in the post-race test.

Includes section on out of competition testing consistent with 810 KAR 1:110.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to keep pace with medical science and provide a fair and effective mechanism for enforcing KHRC rules and regulations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which thoroughbred racing and pari-mutuel wagering thereon shall be conducted in Kentucky and charges it to, "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth." KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This regulation enables the commission to fulfill its statutory mandates by providing a means to enforce its rules and regulations.

(d) How the amendment will assist in the effective administration of the statutes: This regulation enables the commission to fulfill

its statutory mandates by providing a means to enforce its rules and regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all participants in horse racing in Kentucky, including owners, trainers, jockeys, and the commission.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendments to this regulation will not require any particular action on the part of regulated entities. It provides notice to those entities of the potential penalties associated with a rule or regulation violation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are not costs associated with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendments establish a fair penalty structure based on medical science. This regulation provides notice to participants of the potential penalties associated with a rule or regulation violation

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

(a) Initially: There are no costs associated with implementing this administrative regulation.

(b) On a continuing basis: There are no costs associated with implementing this administrative regulation.

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to the affected 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. Kentucky Revised Statutes 230.215, 230.225, 230.240, 230.260, 230.290, 230.310, 230.320.

4. Estimate the effect of this administrative regulation on the expenditures and revenues 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 associated with this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with this administrative regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amendment)

811 KAR 1:090. Medication; testing procedures; prohibited practices.

RELATES TO: KRS 230.215, 230.240[~~(2)~~], 230.260[~~(1)~~], 230.265[~~(2)~~], 230.290[~~(2), (3)~~], 230.310, 230.320[~~(1), EO 2008-668~~]

STATUTORY AUTHORITY: KRS 230.215[~~(2)~~], 230.240[~~(2)~~], 230.260[~~(3), (6)~~], 230.320[~~(1), EO 2008-668~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2), 230.260(3), and 230.320 authorize the commission to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race.[~~EO 2008-668, effective July 3, 2008, established the Kentucky Horse Racing Commission and transferred all authority, functions, and responsibilities of the Kentucky Horse Racing Authority to the commission.~~] This administrative regulation establishes requirements and controls in the administration of drugs, medications, and substances to horses, governs certain prohibited practices, and establishes trainer responsibility relating to the health and fitness of horses.

Section 1. Definitions. (1) "AAS" or "anabolic steroid" means an anabolic androgenic steroid.

(2) "Administer" means to apply to or cause the introduction of a substance into the body of a horse.

(3) "Commission[~~Authority~~] laboratory" means a laboratory chosen by the commission to test biologic specimens[~~samples~~] from a horse taken under the supervision of the commission veterinarian.

(4) "Location under the jurisdiction of the commission"[~~or "Association grounds"~~] means a licensed race track or training center[~~as defined in KRS 230.210(9)~~].

(5) "Permitted NSAIDs" means the following permitted nonsteroidal anti-inflammatory drugs: phenylbutazone,[~~and~~] flunixin, and ketoprofen, if administered in compliance with Section 8 of this administrative regulation.

(6) "Positive finding" means the commission laboratory has conducted testing and determined that a drug, medication, or substance, the use of which is restricted or prohibited by this administrative regulation, was present in the sample.

(a) For the drugs, medications or substances listed in Section 2(3), 6, or 8 of this administrative regulation, a positive finding means a finding in excess of the established concentration level prescribed in those sections.

(b) Positive findings also include:

1. Substances present in the horse in excess of concentrations at which the substances might occur naturally; and

2. Substances foreign to a horse at concentrations that cause interference with testing procedures.

(7) "Primary sample" means the primary sample portion of the biologic specimen taken under the supervision of the commission veterinarian to be tested by the commission laboratory.

(8) "Split sample" means the split sample portion of the biologic specimen[~~samples~~] taken under the supervision of the commission veterinarian to be tested by the split sample laboratory.

(9)[~~(8)~~] "Split sample laboratory" means the laboratory approved by the commission to test the split sample portion of the biologic specimen[~~sample~~] taken from a horse under the supervision of the commission veterinarian.

(10)[~~(9)~~] "Test barn" means a fenced enclosure sufficient in

size and facilities to accommodate the stabling of horses temporarily detained for obtaining [~~sample~~]specimens for pre-race[~~prerace~~] and post-race[~~postrace~~] testing.

(11)[~~(10)~~] "Therapeutic AAS" means boldenone, nandrolone, or testosterone.

Section 2. Use of Medication. (1) Therapeutic measures and medication necessary to improve or protect the health of a horse shall be administered to a horse in training under the direction of a licensed veterinarian.

(2) Except as specifically permitted in this administrative regulation, while participating in a race (betting or nonbetting), qualifying race, time trial, or official workout, a horse shall not carry in its body any drug, medication, substance, or metabolic derivative, that:

(a) Is a narcotic;

(b) Could serve as an anesthetic or tranquilizer;

(c) Could stimulate, depress or affect the circulatory, respiratory, cardiovascular, musculoskeletal, or central nervous system of a horse; or

(d) Might mask or screen the presence of a prohibited drug, or prevent or delay testing procedures.

(3) Therapeutic medications shall not be present in excess of established threshold concentrations set forth in this administrative regulation. The threshold for furosemide is set forth in Section 6 of this administrative regulation. The thresholds for permitted NSAIDS[~~phenylbutazone and flunixin~~] are set forth in Section 8 of this administrative regulation.

(4) A substance shall not be present in a horse in excess of a concentration at which the substance could occur naturally. It shall be the responsibility of the commission to prove that the substance was in excess of normal concentration levels.

(5) It shall be prima facie evidence that a horse was administered and carried, while running in a race (betting or nonbetting), qualifying race, time trial, or official workout, a drug, medication, substance, or metabolic derivative thereof, prohibited by this section, if:

(a) A biologic specimen[~~sample~~] from the horse was taken under the supervision of the commission veterinarian promptly after a horse ran in a race (betting or nonbetting), qualifying race, time trial, or official workout; and

(b) The commission laboratory presents to the commission a report of a positive finding.

(6) The commission shall utilize the ["]Kentucky Horse Racing Commission Uniform Drug, Medication, and Substance[~~Drug and Medication~~] Classification Schedule, as provided in 811 KAR 1:093,[~~(09/08)"~~] for classification of drugs, medications, and substances[~~drugs and medications~~] violating this administrative regulation. Penalties for violations of this administrative regulation shall be implemented in accordance with 811 KAR 1:095.

Section 3. Treatment Restrictions. (1) Except as set forth in Section 4 of this administrative regulation, or the oral administration of phenylbutazone as set forth in Section 8 of this administrative regulation, a person other than a veterinarian licensed to practice veterinary medicine in Kentucky[~~this jurisdiction~~] and licensed by the commission shall not administer a prescription or controlled drug, medication, or other substance to a horse at a location under the jurisdiction of the commission.

(2) The only injectables allowed within twenty-four (24) hours prior to post time of the race in which the horse is entered shall be furosemide, as[~~and the one (1) adjunct bleeder medication~~] set forth in Section 6 of this administrative regulation.

(3) Except as set forth in subsection (5) of this section, a person other than a veterinarian licensed to practice veterinary medicine in Kentucky[~~this jurisdiction~~] and licensed by the commission shall not possess a hypodermic needle, syringe, or injectable of any kind at a location under the jurisdiction of the commission.

(4) A veterinarian licensed to practice veterinary medicine in Kentucky[~~this jurisdiction~~] and licensed by the commission shall use only single-use disposable needles and syringes, and shall dispose of them in a container approved[~~provided~~] by the commission veterinarian.

(5) If a person regulated by the commission, has a medical condition that[~~which~~] makes it necessary to possess a needle and syringe at a location under the jurisdiction of the commission, the person shall request prior permission from the judges and furnish a letter from a licensed physician explaining why it is necessary for the person to possess a needle and syringe. The judges may grant approval for a person to possess and use a needle and syringe[~~syringes~~] at a location under the jurisdiction of the commission, but may establish necessary restrictions and limitations.

(6) A[~~An~~] commission employee may accompany a veterinarian at a location under the jurisdiction of the commission and take possession of a syringe, needle, or other device used to administer a substance to a horse.

Section 4. Certain Permitted Substances. Liniments, antiseptics, antibiotics, ointments, leg paints, washes, and other products commonly used in the daily care of horses may be administered by a person other than a licensed veterinarian if:

(1) The treatment does not include any drug, medication, or substance otherwise prohibited by this administrative regulation;

(2) The treatment is not injected; and

(3) The person is acting under the direction of a licensed trainer or veterinarian licensed to practice veterinary medicine in Kentucky[~~this jurisdiction~~] and licensed by the commission.

Section 5. Anti-Ulcer Medications. The following anti-ulcer medications may be administered orally, at the dosage stated in this section, up to twenty-four (24) hours prior to post time of the race in which the horse is entered:

(1) Cimetidine (Tagamet®): 8-20 mg/kg;

(2) Omeprazole (Gastrogard®): two and two-tenths (2.2)[~~2.2~~] grams;

(3) Ranitidine (Zantac®): eight (8)[~~8~~] mg/kg; and

(4) Sulcrafate: 2-4 grams.

Section 6. Furosemide [~~and Adjunct Bleeder Medication~~]Use on Race Day. (1) Furosemide may be administered, in accordance with this section, to a horse that is entered to compete in a race (betting or nonbetting), qualifying race, time trial, or official workout.

(2)(a) The commission[~~Only the commission veterinarian or a licensed~~] veterinarian shall[~~approved by the commission may~~] administer furosemide prior to a race (betting or nonbetting), [~~qualifying race, ~~]time trial, or official workout.

(b) If the commission veterinarian is unavailable to administer furosemide to a horse prior to a race, the commission shall approve a licensed veterinarian to perform the administration. The commission shall enter into a contract with any veterinarian who will administer furosemide to a horse prior to a race.

(c) If the furosemide is administered by a [~~licensed~~]veterinarian under contract with[~~other than~~] the commission[~~veterinarian~~], the administering veterinarian shall provide a written report to the commission veterinarian no later than two (2) hours prior to post time of the race in which the horse receiving furosemide is competing.

(3) Furosemide may be used under the following circumstances:

(a) Furosemide shall be administered on the grounds of [~~a location under~~]the racing association at which[~~jurisdiction of~~] the horse will compete or work;[~~commission,~~]

(b) Except for qualifying races, furosemide shall be administered by a single intravenous injection, not less than four (4) hours prior to post time for the race, time trial, or official workout in which the horse is entered;[~~.~~

~~(b) The syringe employed in the injection shall be provided immediately to the commission veterinarian, judge or commission employee, if requested, to determine if there has been a violation of this administrative regulation.~~]

(c) The furosemide dosage administered shall not be less than 100 mg and shall not exceed 250 mg;[~~.~~]

(d) The specific gravity of a post-race[~~postrace~~] urine sample[~~samples~~] shall not be below 1.010. If the specific gravity of the post-race[~~postrace~~] urine sample is determined to be below 1.010, a quantification of furosemide in blood serum or plasma shall be performed. If a horse fails to produce a urine specimen, the commission laboratory shall perform a quantification of furosemide in

the blood serum or plasma specimen. Concentrations above 100 nanograms of furosemide per milliliter of blood serum or plasma shall constitute a violation of this section; and

(4) After consulting with industry representatives, the commission shall determine[.

(e) A horse eligible to receive furosemide and entered to race, pursuant to Section 7 of this administrative regulation, that does not show a detectable concentration of the drug in the postrace urine, plassma, or serum shall be in violation of this administrative regulation.

(f)] the cost of administering furosemide [shall be determined by the commission]based on prevailing costs of veterinary services and supplies at the time the determination is made. The commission shall maintain records documenting the basis for its determination and the cost[and] shall be prominently posted in the racing office. [(g) The cost of administering furosemide shall be borne by the trainer.

(4) One of the following adjunct bleeder medications may be administered to a horse not less than four (4) hours prior to post time for the race in which the horse is entered:

(a) Aminocaproic acid:

(b) Carbazochrome:

(c) Conjugated estrogens; or

(d) Tranexamic acid.]

Section 7. Furosemide Eligibility. (1)(a) A horse shall be eligible to qualify with furosemide if the[commission veterinarian or a] licensed trainer or a licensed veterinarian [approved by the commission]determines that it would be in the horse's best interest to race with furosemide. Notice that a horse eligible to receive furosemide shall race with or without furosemide shall be made at the time of entry to ensure public notice, including publication in the official racing program.

(b) It shall constitute a violation of this administrative regulation when notice is made pursuant to this section that a horse shall race with furosemide and the post-race urine, blood serum, or plasma does not show a detectable concentration of furosemide in the post-race urine, blood serum, or plasma.

(c) Horses[(b) A horse] eligible for furosemide and entered to start may be monitored by a[an] commission-approved representative during the four (4) hour period prior to post time of the race in which the horse is entered.

(2)[(a) A horse determined to be a bleeder by the commission veterinarian or a licensed veterinarian approved by the commission shall not be eligible to qualify for five (5) days after determination for eligibility to receive furosemide has been made.

(b) A horse that has been placed on the furosemide list shall perform in a qualifying race with furosemide and meet the standards of the meeting before being eligible to race.

(c) A horse eligible for furosemide shall receive furosemide unless the licensed veterinarian submits a written request to the commission veterinarian to no longer administer furosemide to the horse. The request shall be on the form "Certificate of Termination of Lasix KHRA 100-5 (8/06)" and shall be submitted to the commission veterinarian.

(d) A horse that has been determined eligible to receive furosemide shall not have the administration of furosemide terminated in a pari-mutuel race until the horse has performed in a qualifying race without the use of furosemide.

(3)(a)] After a horse has been determined [by the commission veterinarian]to no longer be required to receive furosemide, the horse shall not be eligible to receive furosemide unless the licensed trainer or a licensed veterinarian determines that it would be in the horse's best interests to race with furosemide and the licensed trainer or a licensed veterinarian complies with the requirements of this section[the horse shall not be eligible to receive furosemide for a period of sixty (60) calendar days unless it is determined by the commission veterinarian that it is detrimental to the welfare of the horse to not be on furosemide. The commission veterinarian shall complete the form "Declaration to Remove a Horse from the administration of Furosemide KHRA 100-1 (8/06)" if the commission veterinarian determines that the horse is no longer required to receive furosemide].

[(b) If a horse is determined by the commission veterinarian to be ineligible to receive furosemide a second time in a three hundred sixty-five day period, the horse shall not be eligible to receive furosemide for a period of ninety (90) calendar days.

(4) A horse that has been placed on a furosemide or bleeder list in another jurisdiction may be eligible to receive furosemide in this jurisdiction.]

Section 8. Permitted Non-steroidal Anti-Inflammatory Drugs (NSAIDs). (1) One (1) of the NSAIDs listed in this section may be used not less than twenty-four (24) hours prior to post time for the race for which the horse is entered if the concentration in the horse's[sample or] specimen does not exceed the levels set forth in this section when tested post-race[post race].

(2) Phenylbutazone.

(a) A single oral or intravenous administration of phenylbutazone may be administered not less than twenty-four (24) hours prior to post time of the race for which the horse is entered.

(b) The phenylbutazone dosage administered shall not exceed:

1. Two (2) mg/lb[grams (g)] oral; or

2. Two (2) mg/lb[grams (g)] intravenous.

(c) A post-race biologic specimen[post race sample] of phenylbutazone reported to exceed a level of five (5) micrograms per milliliter of blood serum or plasma shall be considered a violation of this section.

(d) The oral administration of phenylbutazone may be performed by the trainer.

(3) Flunixin.

(a) A single intravenous administration of flunixin may be administered not less than twenty-four (24) hours prior to post time of the race for which the horse is entered.

(b) The flunixin dosage administered shall not exceed.5 mg/lb[500 mg].

(c) A post-race biologic specimen[post race sample] of flunixin reported to exceed a level of twenty (20) nanograms per milliliter of blood serum or plasma shall be considered a violation of this section.

(4) Ketoprofen.

(a) A single intravenous administration of ketoprofen may be administered not less than twenty-four (24) hours prior to post time of the race for which the horse is entered.

(b) The ketoprofen dosage administered shall not exceed 1 mg/lb[one (1) gram].

(c) A post-race[post race] sample of ketoprofen reported to exceed a level of ten (10) nanograms per milliliter of blood serum or plasma shall be considered a violation of this section.

(5) Phenylbutazone, flunixin or ketoprofen, injected intravenously, shall be administered by a licensed veterinarian approved by the commission.[If there is no licensed veterinarian reasonably available, the commission veterinarian may administer the injection with the prior approval of the Chief Judge.]

(6)(a) The use of any NSAID other than the permitted NSAIDs, and the use of multiple permitted NSAIDs shall be discontinued at least forty-eight (48) hours prior to post time for the race in which the horse is entered.

(b) A finding of[Nonsteroidal anti-inflammatory drugs other than] phenylbutazone below a concentration of one (1) microgram per milliliter of blood serum or plasma[, flunixin, or ketoprofen] shall not constitute a violation of this section[be used].

(c) A finding of flunixin below a concentration of three (3) nanograms per milliliter of blood serum or plasma shall not constitute a violation of this section.

(7) A horse that has been administered phenylbutazone, flunixin, or ketoprofen shall be subject to having a biologic specimen collected [sample taken] under the supervision of the commission veterinarian to determine the quantitative phenylbutazone, flunixin, or ketoprofen level present in the horse or the presence of other drugs in the horse. [(8) In a horse in which phenylbutazone has been administered according to subsection (2) of this section, flunixin and ketoprofen shall not be used. In a horse in which flunixin has been administered according to subsection (3) of this section, phenylbutazone and ketoprofen shall not be used. In a horse in which ketoprofen has been administered according to subsection (4) of this section, phenylbutazone and flunixin shall not

~~be used.~~

~~(9) A finding of phenylbutazone below a concentration of one (1) microgram per milliliter of plasma or serum shall not constitute a violation of subsection (8) of this section.~~]

Section 9. Anabolic Steroids. (1) An exogenous AAS[~~anabolic androgenic steroid~~] shall not be present in a horse that is racing. The detection of an exogenous AAS[~~anabolic steroid~~] or metabolic[~~metabolite~~] derivative in a post-race[~~postrace biologic sample~~] or a pre-race[~~prerace biologic~~] sample after the horse has been entered shall constitute a violation of this administrative regulation.

(2) The detection in a post-race[~~postrace~~] sample of an endogenous AAS[~~anabolic steroid~~] or metabolic[~~metabolite~~] derivative where the concentration of the AAS, a metabolite, a marker, or any relevant ratio as has been published in peer-reviewed scientific literature deviates from a naturally occurring physiological level shall constitute a violation of this administrative regulation. The following shall be deemed to be naturally occurring physiological levels:

(a) Boldenone (free and conjugated):

1. In male horses other than geldings - 15 ng/ml in urine or 200 pg/ml in blood serum or plasma; and

2. In geldings and female horses, boldenone shall not be permitted.

(b) Nandrolone (free and conjugated):

1. In geldings - 1 ng/ml in urine or 50 pg/ml in blood serum or plasma;

2. In fillies and mares - 1 ng/ml in urine or 50 pg/ml in blood serum or plasma; and

3. In male horses other than geldings - 45 ng/ml of metabolite, 5α[~~5Σ~~]-estrane-3β, 17α[~~17 Σ~~]-diol in urine or a ratio in urine of 5α[~~5Σ~~]-estrane-3β, 17α[~~17 Σ~~]-diol to 5α[~~5Σ~~]-estrene-3β, 17α[~~17 Σ~~]-diol of >1:1.[~~; and~~]

(c) Testosterone (free and conjugated):

1. In geldings - 20 ng/ml in urine or 25 pg/ml in blood serum or plasma; and

2. In fillies and mares - 55 ng/ml in urine or 25 pg/ml in blood serum or plasma.

(3) In accordance with this subsection, a horse may receive one (1) therapeutic AAS.

(a) The therapeutic AAS shall be given for the sole purpose of treating an existing illness or injury having been diagnosed by the regular attending veterinarian. An owner or trainer who is uncertain about whether a particular purpose is considered to be therapeutic shall consult with the commission prior to administration.[~~;~~]

(b) The horse shall be ineligible to race in Kentucky until all of the following have occurred:

1. A minimum of sixty (60) days has passed since the administration of the therapeutic AAS to the horse;

2. A relevant specimen[~~biologic sample~~] is taken from the horse;

3. The sample is tested for AAS[~~anabolic steroids~~] by a laboratory from the approved list established by the commission at the expense of the owner of the horse; and

4. The commission has received a report from the laboratory of a negative finding regarding the sample.[~~;~~]

(c) A report from the commission laboratory of a negative finding in a pre-race[~~prerace~~] sample does not provide a safe harbor for the owner, trainer, veterinarian or horse. A report from the commission laboratory of a positive finding in a post-race[~~postrace~~] sample shall be treated as a violation of this administrative regulation even if there was a negative finding by the commission laboratory in a pre-race sample.[~~prerace sample;~~]

(d) The horse shall not be entered to race until at least sixty (60) days after the administration of the therapeutic AAS to the horse.

(e) Procedures for administration of therapeutic AAS.

1. A therapeutic AAS shall be administered by a licensed veterinarian.

2. Other treatment methods shall be investigated prior to considering the use of therapeutic AAS.[~~;~~]

3. Medical records for the horse shall document:

a. Consideration of alternative treatment methods; and

b. The necessity for administering the therapeutic AAS.

4. The administering veterinarian shall record on the Therapeutic AAS Administration Form the following information:

a. The therapeutic AAS administered, the amount in milligrams, route, and site of administration;

b. The date and time of administration;

c. The name, age, sex, color, and registration certificate number of the horse to which the therapeutic AAS is administered; and

d. The diagnosis and justification for administration of the therapeutic AAS to the horse.

5. The Therapeutic AAS Administration Form shall be signed by the veterinarian administering the medication.

6. The Therapeutic AAS Administration Form shall be delivered electronically to the commission equine medical director[~~of the Kentucky Horse Racing Commission~~] within seventy-two (72) hours after administration. If the Therapeutic AAS Administrative Form cannot be delivered electronically, the veterinarian[~~practitioner~~] shall file the form with the equine medical director in person or through the mail. The submitting veterinarian shall confirm receipt by the equine medical director.

(4) [~~If a horse is shipped into Kentucky from outside the state, prior to being eligible to race in Kentucky:~~

~~(a) The protocol in subsection (3) of this section shall be complied with in its entirety; or~~

~~(b)1. The trainer shall certify that he or she has had control of the horse for the sixty (60) days previous to racing and the horse has not been administered an anabolic steroid; or~~

~~2. The trainer shall certify that he or she has not had control of the horse for the sixty (60) days previous to racing but shall acknowledge that he or she is responsible and accountable if a postrace test identifies a violation of this administrative regulation.~~

~~(5)~~]Substances referred to in subsections (1) and (2) of this section are "Class B" drugs. A positive test for an exogenous AAS[~~anabolic steroid~~] or for an amount of an endogenous AAS[~~anabolic steroid~~] in excess of a concentration referred to in subsection (2) of this section shall be subject to the penalties referred to in 811 KAR 1:095.

(5)[~~(6)~~](a) The detection of a therapeutic AAS or metabolic[~~metabolite~~] derivative in any sample in excess of a threshold level set forth in subsection (2) of this section shall constitute a violation.

(b) Each separate therapeutic AAS detected in excess of a threshold level shall constitute a separate violation.

(6)[~~(7)~~] The trainer and veterinarian for the horse shall be charged accordingly and shall be subject to penalties for a violation of this administrative regulation.

(7)[~~(8)~~](a) A claimed horse may be tested for the presence of an AAS if the claimant requests the test when the claim form is completed and deposited in the association's claim box. The claimant shall bear the costs of the test. The results of the test shall be reported to the presiding judge[~~Senior State Steward~~].

(b) If a test is positive, the claim may be voided at the option of the claimant and the claimant shall be entitled to return of all sums paid for the claimed horse, expenses incurred after the date of the claim, and the costs of testing.

(c) If the test is negative, the claimant shall reimburse the entity paying for the testing or the prior owner for the cost of the testing.

(d) While awaiting test results, a claimant:

1. Shall exercise due care in maintaining and boarding a claimed horse; and

2. Shall not materially alter a claimed horse.

(8)[~~(9)~~] The gender of the horse from which a post-race biologic specimen[~~sample~~] is collected shall be identified to the commission[~~state~~] veterinarian and the testing laboratory.

(9)[~~(10)~~] Only a licensed veterinarian may possess or administer a therapeutic AAS. [~~(11) If there is a positive test for AAS from a sample taken from November 4, 2008 through December 30, 2008, it shall be considered an aggravating factor in any subsequent case involving a violation of this administrative regulation.~~]

Section 10. Test Barn[~~Area~~]. (1) During a licensed meet, a licensed association shall provide and maintain a test barn on association grounds[~~a test area~~].

(2) The test barn[~~area~~] shall be a fenced enclosure sufficient in size and facilities to accommodate the stabling of horses tempo-

rarily detained for the taking of biologic[~~sample~~] specimens for pre-race[~~prerace~~] and post-race[~~postrace~~] testing.

(3) The test barn[~~area~~] shall be under the supervision and control of the commission veterinarian.

Section 11. Sample Collection, Testing and Reporting. (1) Sample collection shall be done in accordance with the procedures provided in 811 KAR 1:260 and under the instructions provided by the commission veterinarian.[~~The commission veterinarian shall take a sample from a horse that finishes first in a race and a horse or horses designated by the judges to determine if there has been a violation of this administrative regulation.~~]

(2) The commission veterinarian shall determine a minimum sample requirement for the commission laboratory which shall be uniform for each horse and which shall be separated into primary and split samples.[~~(a) If the specimen obtained from a horse is less than the minimum sample requirement, the entire specimen shall be sent to the commission laboratory.~~

~~(b) If a specimen obtained is greater than the minimum sample requirement but less than twice that amount, the portion of the sample that is greater than the minimum sample requirement shall be secured as the split sample.~~

~~(c) If a specimen obtained is greater than twice the minimum sample requirement, a portion of the sample approximately equal to the amount provided for the commission laboratory shall be secured as the split sample.~~]

(3) An owner or trainer may request that a split sample be:

(a) Taken from a horse he owns or trains by the commission veterinarian; and

(b) Tested by the split sample laboratory.

(4) The cost of testing under subsection (3) of this section, including shipping, shall be borne by the owner or trainer requesting the test.

(5)(a) Stable equipment other than that necessary for washing and cooling out a horse shall not be permitted in the test barn.

(b) Buckets and water shall be furnished by the commission veterinarian.

(c) If a body brace is to be used on a horse, it shall:

1. Be supplied by the trainer;[~~,~~] and

2. Applied[~~Administered~~] only with the permission and in the presence of the commission veterinarian or his designee.

(d) A licensed veterinarian may attend to a horse in the test barn[~~, but~~] only with the permission of, and in the presence of, the commission veterinarian or his designee.

(6) Within five (5) business days of receipt of notification by the commission laboratory of a positive finding, the commission shall notify the owner and trainer orally or in writing of the positive finding.

(7) The judges shall schedule a hearing within fourteen (14) calendar days of notification by the commission to the owner and trainer. The hearing may be continued if the judges determine that a continuance is necessary to effectively resolve the issue.

Section 12. Storage and Shipment of Split Samples. (1) Split samples shall be secured and made available for further testing in accordance with the following procedures:

(a) Split samples shall be secured in the test barn in the same manner as the primary samples for shipment to the commission laboratory as addressed in Section 11 of this administrative regulation, until the primary[~~split~~] samples are packed and secured for shipment to the commission laboratory. Split samples shall then be transferred to a freezer or refrigerator at a secure location approved and chosen by the commission;[~~.~~]

(b) A freezer or refrigerator for storage of split samples shall be equipped with a lock. The lock shall be secured to prevent access to the freezer or refrigerator at all times except as specifically provided by paragraph (c) of this subsection;[~~.~~]

(c) A freezer or refrigerator for storage of split samples shall be opened only for depositing or removing split samples, for inventory, or for checking the condition of samples;[~~.~~]

(d) A log shall be maintained by the commission veterinarian that shall be used each time a split sample freezer or refrigerator is opened to specify each person in attendance, the purpose for opening the freezer or refrigerator, identification of split samples deposited or removed, the date and time the freezer or refrigerator was opened, the time the freezer or refrigerator was closed and verification that the lock was secured prior to and after opening of the freezer or refrigerator. A[~~An~~] commission veterinarian or his [~~or her~~]designee shall be present when the freezer or refrigerator is opened;[~~.~~]

(e) Evidence of a malfunction of a split sample freezer or refrigerator[~~of samples that are not in a frozen condition during storage~~] shall be documented in the log; and[~~.~~]

(f) The commission shall be considered the owner of a split sample.

(2)(a) A trainer or owner of a horse receiving notice of a positive finding may request that a split sample corresponding to the portion of the sample[~~specimen~~] tested by the commission laboratory be sent to the split sample laboratory. The party requesting the split sample shall select from a list of laboratories approved by the commission to perform the analysis.

(b) The request shall be made in writing and delivered to the judges within three (3) business days after the trainer or owner of the horse receives oral or written notice of the positive finding by[~~of~~] the commission laboratory.

(c) A split sample so requested shall be shipped as expeditiously as possible.

(3)(a) The owner or trainer requesting testing of a split sample shall be responsible for the cost of the testing, including the cost of shipping.

(b) Failure of the owner, trainer or a designee to appear at the time and place designated by the commission veterinarian in connection with securing, maintaining and shipping the split sample [~~result~~]shall constitute a waiver of any right to be present during split sample testing procedures.

(c) Prior to shipment of the split sample, the commission shall confirm:

1. That the split sample laboratory has agreed to provide the testing requested;

2. That the split sample laboratory has agreed to send results to [~~both the person requesting the testing and~~]the commission; and

3. That arrangements for payment satisfactory to the split sample laboratory have been made.

(d) The commission shall maintain a list of laboratories approved for the testing of split samples and the list shall be on file at the offices of the commission.

Section 13. Split Sample Chain of Custody. (1) Prior to opening the split sample freezer or refrigerator, the commission shall provide a split sample chain of custody verification form. The form to be used shall be the [~~"~~]Split Sample Chain of Custody Form.[~~"~~] The form shall be fully completed during the retrieval, packaging, and shipment of the split sample and shall contain the following information:

(a) The date and time the sample is removed from the split sample freezer or refrigerator;

(b) The sample number; and

(c) The address where the split sample is to be sent.

(2) A split sample shall be removed from the split sample freezer or refrigerator by a[~~an~~] commission employee after notice to the owner, trainer, or designee, and a[~~an~~] commission-designated representative shall pack the split sample for shipment in accordance with the packaging procedures directed by the commission. The Split Sample Chain of Custody Form shall be signed by both the owner's representative, if present, and the commission representative to confirm the proper packaging of the split sample for shipment. The exterior of the package shall be secured and sealed to prevent tampering with the package.

(3) The owner, trainer or designee, if present, may inspect the package containing the split sample immediately prior to transfer to the delivery carrier to verify that the package is intact and has not been tampered with.

(4) The Split Sample Chain of Custody Form shall be completed and signed by the representative of the commission and the owner, trainer or designee, if present.

(5) The commission representative shall retain the original Split Sample Chain of Custody Form and provide a copy for the owner, trainer, or designee, if requested.

Section 14. Medical Labeling. (1) A licensee on association grounds shall not have within his or her possession, or within his or her personal control, a drug, medication, or other substance that is prohibited from being administered to a horse on a race day unless the product is properly and accurately labeled.

(2) A drug or medication which, by federal or state law, requires a prescription shall not be used or kept on association grounds unless validly prescribed by a duly licensed veterinarian.

(3) A drug or medication shall bear a prescription label which is securely attached and clearly ascribed to show the following:

(a) The name of the product;

(b) The name, address and telephone number of the veterinarian prescribing or dispensing the product;

(c) The name of the horse for which the product is intended or prescribed;

(d) The dosage, duration of treatment and expiration date of the prescribed or dispensed product; and

(e) The name of the trainer to whom the product was dispensed.

Section 15. Trainer Responsibility. (1) A trainer shall be responsible for the condition of a horse in his or her care.

(2) A trainer shall be responsible for the presence of a prohibited drug, medication, substance, or metabolic derivative, including permitted medication in excess of the maximum allowable concentration, in a horse in his or her care.

(3) A trainer shall prevent the administration of a drug, medication, substance, or metabolic derivative that may constitute a violation of this administrative regulation.

(4) A trainer whose horse has been claimed shall remain responsible for a violation of this administrative regulation regarding that horse's participation in the race in which the horse is claimed.

(5) A trainer shall be responsible for:

(a) Maintaining the assigned stable area in a clean, neat and sanitary condition at all times;

(b) Using the services of those veterinarians licensed by the commission to attend to a horse that is on association grounds;

(c) The proper identity, custody, care, health, condition and safety of a horse in his or her care;

(d) Promptly reporting the alteration of the sex of a horse to the horse identifier and the racing secretary;

(e) Promptly reporting to the racing secretary and the commission veterinarian if a posterior digital neurectomy (heel nerving) is performed on a horse in his or her care and ensuring this fact is designated on its certificate of registration;

(f) Promptly reporting to the racing secretary the name of a mare in his or her care that has been bred and is entered to race;

(g) Promptly notifying the commission veterinarian of a reportable disease or communicable illness in a horse in his or her care;

(h) Promptly reporting the serious injury or death of a horse, in his or her care, at a location under the jurisdiction of the commission to the judges and the commission veterinarian and ensuring compliance with Section 22 of this administrative regulation governing postmortem examinations;

(i) Maintaining a medication record and medication status of a horse in his or her care;

(j) Promptly notifying the judges and the commission veterinarian if the trainer has knowledge or reason to believe that there has been an administration to a horse of a drug, medication, or other substance prohibited by this administrative regulation or has knowledge or reason to believe that a prohibited practice has occurred as set forth in Section 20 of this administrative regulation;

(k) Ensuring the fitness of every horse in his or her care to perform creditably at the distance entered;

(l) Ensuring proper bandages, equipment, and shoes;

(m) Ensuring the horse's presence in the paddock at least one (1) hour prior to [~~before~~]post time, or at a time otherwise prescribed, by racing officials before the race in which the horse is entered;

(n) Personally attending in the paddock and supervising the preparation of a horse in his or her care, unless an assistant trainer fulfills these duties or the trainer is excused by the judges; and

(o) Attending the collection of a biologic specimen[~~sample~~] taken from a horse in his or her care or delegating a licensed employee or the owner to do so.

Section 16. Licensed Veterinarians. (1) A veterinarian licensed by the commission and practicing at a location under the jurisdiction of the commission shall be considered under the supervision of the commission veterinarian and the judges.

(2) A veterinarian shall report to the judges or the commission veterinarian a violation of this administrative regulation by a licensee.

Section 17. Veterinary[~~Veterinarians'~~] Reports. (1) A veterinarian who treats a horse at a location under the jurisdiction of the commission shall submit a Veterinary[~~KHRA 100-2 form, "Veterinarian~~] Report of Horses Treated to be Submitted Daily form[~~",~~] to the commission veterinarian containing the following information:

(a) The name of the horse treated;

(b) The type and dosage of drug or medication administered or prescribed;

(c) The name of the trainer of the horse;

(d) The date and time of treatment; and

(e) Other pertinent information requested by the commission veterinarian.

(2) The Veterinary Report of Horses Treated to be Submitted Daily[~~KHRA-2~~] form shall be signed by the treating veterinarian.

(3) The Veterinary Report of Horses Treated to be Submitted Daily[~~KHRA-2~~] form shall be on file not later than the time prescribed on the next race day by the commission veterinarian.

(4) The Veterinary Report of Horses Treated to be Submitted Daily[~~KHRA-2~~] form shall be confidential and its content shall not be disclosed except in the course of an investigation of a possible violation of this administrative regulation or in a proceeding before the judges or the commission, or to the trainer or owner of record at the time of treatment.

(5) A timely and accurate filing of a Veterinary Report of Horses Treated to be Submitted Daily[~~the KHRA-2~~] form by the veterinarian or his or her designee that is consistent with the analytical results of a positive test reported by the commission laboratory may be used as a mitigating factor in determining the appropriate penalties pursuant to 811 KAR 1:095.

(6) A veterinarian having knowledge or reason to believe that a horse entered in a race has received a drug, medication or substance prohibited under this administrative regulation or has knowledge or reason to believe that a prohibited practice has occurred as set forth in Section 20 of this administrative regulation shall report this fact immediately to the commission veterinarian or to the judges.

(7) A practicing veterinarian shall maintain records of all horses treated and of all medications sold or dispensed. The records shall include:

(a) The name of the horse;

(b) The trainer of the horse;

(c) The date, time, amount and type of medication administered;

(d) The drug or compound administered;

(e) The method of administration; and

(f) The diagnosis.

(8) The records shall be retained for at least sixty (60) days after the horse has raced and shall be available for inspection by the commission[~~personnel~~].

Section 18. Veterinarian's List. (1) The commission veterinarian shall maintain a list of horses determined to be unfit to compete in a race due to illness, physical distress, unsoundness, infirmity, or other medical condition.

(2) A horse may be removed from the veterinarian's list if, in the opinion of the commission veterinarian, the horse is capable of competing in a race.

(3) The commission veterinarian shall maintain a bleeder list of all horses that have demonstrated external evidence of exercise-induced pulmonary hemorrhage during or after a race or workout as observed by the commission veterinarian or a licensed veterinarian approved by the commission.

(4) A horse that is a confirmed bleeder, regardless of age, shall be placed on the bleeder list and be ineligible to participate in a

race (betting or nonbetting), qualifying race, time trial, or official workout for the following time periods:

(a) First incident - fourteen (14) days;

(b) Second incident within a 365 day period - thirty (30) days;

(c) Third incident within a 365 day period - 180 days; and

(d) Fourth incident within a 365 day period - barred from racing for life.

(5) For the purpose of counting the number of days a horse is ineligible to run, the day after the horse bled externally shall be the first day of the recovery period.

(6) The voluntary administration of furosemide without an external bleeding incident shall not subject a horse to the initial period of ineligibility as defined in this section.

(7) [~~A horse shall be removed from the bleeder list only upon the direction of the commission veterinarian, who shall certify in writing to the judges the recommendation for removal.~~

~~(8)~~] A horse that has been placed on a bleeder list in another jurisdiction may be placed on the bleeder list maintained by the commission veterinarian.

Section 19. Distribution of Purses, Barn Searches, and Retention of Samples. (1) Purse money shall be distributed no later than twenty-four (24)[~~seventy-two (72)~~] hours after notice from[~~a race unless~~] the commission that a[~~laboratory has issued a preliminary or~~] final laboratory report has been issued[~~indicating the presence of a prohibited drug, medication, substance or metabolic derivative in the biologic sample taken from a horse~~].

(2) The distribution of purse money prior to the issuance of a final laboratory report shall not be considered a finding that no prohibited drug, medication, substance, or metabolic derivative has been administered to a horse.

(3) After the laboratory issues a positive finding, the executive director of the commission or the judges shall immediately authorize and execute an investigation into the circumstances surrounding the incident that is the subject of the positive finding.

(4) At the conclusion of the investigation, a report shall be prepared and filed with the executive director and chairman of the commission detailing the findings of the investigation.

(5) If the purse money has been distributed, the judges shall order the money returned at the conclusion of an investigation finding that a prohibited drug, medication, substance, or metabolic derivative was administered to a horse eligible for purse money.

(6) At the conclusion of testing by the commission laboratory and split sample laboratory, the remaining portion of the samples at the commission laboratory and split samples remaining at the test barn may be retained at a proper temperature at a secure facility approved and chosen by the commission. If a report indicating a positive finding has been issued, the commission shall use its best reasonable [~~best~~]efforts to retain any remaining portion of the sample until legal proceedings have concluded. The commission may freeze samples.

Section 20. Other Prohibited Practices. (1) A drug, medication, or substance shall not be possessed of used by a licensee, or his designee or agent, within a nonpublic area at a location under the jurisdiction of the commission:

(a) The use of which may endanger the health and welfare of the horse; or

(b) The use of which may endanger the safety of the driver.[;]

(2) Without the prior permission of the commission or its designee, a drug, medication or substance that has never been approved by the United States[~~U. S.~~] Food and Drug Administration (USFDA)[~~(FDA)~~] for use in humans or animals shall not be possessed or used at a location under the jurisdiction of the commission. The commission shall determine whether to grant prior permission after consultation with the Equine [~~Research~~]Drug Research Council.[;]

(3) The following blood doping agents shall not be possessed or used at a location under the jurisdiction of the commission:

(a) Erythropoietin;

(b) Darbepoetin;

(c) Oxyglobin®;

(d) Hemopure®; or

(e) Any substance that abnormally enhances the oxygenation of body tissue.[;]

(4) A treatment, procedure or therapy shall not be practiced, administered, or applied which may:

(a) Endanger the health or welfare of a horse; or

(b) Endanger the safety of a driver.[;]

(5) Extracorporeal shock wave therapy or radial pulse wave therapy shall not be used unless the following conditions are met:

(a) A treated horse shall not race for a minimum of ten (10) days following treatment;

(b) A veterinarian licensed to practice by the commission shall administer the treatment;

(c) The commission veterinarian shall be notified prior to the delivery of the machine on association grounds; and

(d) A report shall be submitted by the veterinarian administering the treatment to the commission veterinarian on the Kentucky Horse Racing Commission [~~prescribed form within twenty-four (24) hours of treatment. The form to be used is the "~~]Veterinary Report of Horses Treated with Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy form within twenty-four (24) hours of treatment.[;"]

(6) Other than furosemide, an alkalizing substance that could alter the blood serum or plasma pH or concentration of bicarbonates or carbon dioxide in a horse shall not be used within twenty-four (24) hours prior to post time of the[~~a~~] race in which the horse is entered.[;]

(7) Without the prior permission of the commission veterinarian or his [~~or her~~]designee, based on standard veterinary practice for recognized conditions, a nasogastric tube which is longer than six (6) inches shall not be used for the administration of any substance within twenty-four (24) hours prior to post[~~the~~] time of the[~~a~~] race in which the horse is entered.[;]

(8) A blood serum or plasma total carbon dioxide (TCO2) level shall not exceed 37.0 millimoles per liter in a horse to which furosemide has not been administered, or 39.0 millimoles per liter in a horse to which furosemide has been administered; except, no violation shall exist if the TCO2 level is found to be normal for the horse following the quarantine procedure set forth in Section 21 of this administrative regulation.[;]

(9) A blood gas machine shall not be possessed or used by a person other than an authorized representative of the commission at a location under the jurisdiction of the commission.[~~; and~~]

(10) A shock wave therapy machine or radial pulse wave therapy machine shall not be possessed or used by anyone other than a veterinarian licensed by the commission at a location under the jurisdiction of the commission.

Section 21. TCO2 Testing and Procedures. (1)(a) The presiding judge may order the pre-race[~~prerace~~] or post-race[~~postrace~~] collection of blood specimens[~~samples~~] from, and pre-race[~~prerace~~] or post-race[~~post-race~~] testing of, a horse to determine the total carbon dioxide concentration in the blood serum or plasma of the horse. The winning horse and other horses, as directed by the presiding judge, may be tested in each race to determine if there has been a violation of this administrative regulation.

(b) Pre-race[~~Prerace~~] and post-race[~~postrace~~] testing shall be done at a reasonable time, place, and manner as directed by the presiding judge in consultation with the commission veterinarian.

(c) A specimen[~~sample~~] consisting of at least two (2) blood tubes shall be taken from a horse to determine the TCO2 concentration in the blood serum or plasma of the horse. If the commission laboratory determines that the TCO2 exceeds 37.0 millimoles per liter in a horse to which furosemide has not been administered, or 39.0 millimoles per liter in a horse to which furosemide has been administered, the executive director of the commission shall be informed of the positive finding.

(d) If the specimen[~~sample~~] is taken prior to the race and the TCO2 exceeds 37.0 millimoles per liter in a horse to which furosemide has not been administered, or 39.0 millimoles per liter in a horse to which furosemide has been administered, the judges shall scratch the horse from the race.

(e) Split sample testing for TCO2 may be requested by an owner or trainer in advance of the collection of the specimen[~~samples~~] by the commission veterinarian; however, the collec-

tion and testing of a split sample for TCO2 testing shall be done at a reasonable time, place and manner directed by the commission veterinarian.

(f) The cost of split sample testing, including the cost of shipping, shall be borne by the owner or the trainer.

(2)(a) If the level of TCO2 is determined to exceed 37.0 millimoles per liter in a horse to which furosemide has not been administered, or 39.0 millimoles per liter in a horse to which furosemide has been administered, and the licensed owner or trainer of the horse certifies in writing to the judges within twenty-four (24) hours after the notification of the test result that the level is normal for that horse, the owner or trainer may request that the horse be held in quarantine. If quarantine is requested, the licensed association shall make guarded quarantine available for that horse for a period of time to be determined by the judges but not for more than 120 hours.

(b) The expense for maintaining the quarantine shall be borne by the owner or trainer.

(c) During quarantine, the horse shall be re-tested periodically by the commission veterinarian.

(d) The horse shall not be permitted to race during a quarantine period, but it may be exercised and trained at times prescribed by the licensed association and in a manner that allows monitoring of the horse by a[~~an~~] commission representative.

(e) During quarantine, the horse shall be fed only hay, oats, water, and, subject to the specific approval of the commission veterinarian, the horse's usual feed ration and supplements. In addition, subject to approval of the commission veterinarian, the horse shall be administered furosemide by the commission veterinarian in the same manner and at the same dosage as was provided to horses eligible for furosemide on the day which the horse in quarantine raced.

(f) If the commission veterinarian is satisfied that the horse's level of TCO2, as registered in the original test, is physiologically normal for that horse, the judges:

1. Shall permit the horse to race; and

2. May require repetition of the quarantine procedure set forth in paragraphs (a) through (f) of this subsection to reestablish that the horse's TCO2 level is physiologically normal.

Section 22. Postmortem Examination. (1) [~~The commission veterinarian may require a postmortem examination by a qualified designee of the commission of~~] A horse that dies or is euthanized on the grounds of a licensed association or training center[~~destroyed at a location~~] 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 provided in 810 KAR 1:012, Section 14.

(2) The commission [~~or its designee shall coordinate with the trainer or owner to determine and address any insurance requirements.~~

~~(3) The commission veterinarian may take possession of a horse that dies or is destroyed for postmortem examination. The commission veterinarian may submit biologic samples collected during a postmortem examination for analysis. Upon completion of the postmortem examination, the remains may be returned to the owner or disposed of at the owner's option and expense. The commission~~]shall bear the cost of an autopsy[~~a necropsy~~] that is required by the commission.

(3)[~~(4)~~] The presence of a prohibited drug, medication, substance or metabolic derivative thereof in a specimen collected during the postmortem examination of a horse that died during a pari-mutuel race shall constitute a violation of this administrative regulation.

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

(a) [~~"Kentucky Horse Racing Commission Uniform Drug and Medication Classification Schedule", (8-08);~~

~~(b) "Declaration to remove a horse from the Administration of Furosemide KHRA 100-1", 8/06;~~]

~~(c)~~] "Veterinary Report of Horses Treated to be Submitted Daily", KRC-2, 8/97[~~, KHRA 100-2", 8/06~~];

(b)[~~(d)~~] "Split Sample Chain of Custody Form", KHRC 18-01, 4/12[~~, KHRA 100-3", 8/06~~];

(c)[~~(e)~~] "Veterinary Report of Horses Treated with Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy", KHRC 18-02, 4/12[~~, KHRA 100-4", 8/06~~]; and

(d)[~~(f) "Certificate of Termination of Lasix, KHRA 100-5", 8/06; and~~

~~(g)~~] "Therapeutic AAS Administration Form", KHRC 18-03, 4/12[~~, 09/08~~].

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

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

APPROVED BY AGENCY: May 10, 2012

FILED WITH LRC: May 11, 2012 at 3 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held be held on June 27, 2012 at 9:00 a.m., at The Red Mile, The Red Mile Clubhouse, 1200 Red Mile Road, Lexington, Kentucky 40504. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by June 20, 2012, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 2, 2012. 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 governs the administration of drugs, medications, and substances to standardbred horses racing at licensed racing associations in Kentucky. It identifies both permitted and prohibited substances and establishes protocols for the administration of the permitted substances. It establishes procedures for the collection, storage and shipment of biologic specimens that will be tested for regulated substances, as well as the chain of custody and testing protocols for those biologic specimens. The regulation defines a trainer's responsibilities, making the trainer responsible for the condition of any horse in his or her care. It establishes reporting requirements for veterinarians who are treating racehorses in Kentucky and creates a Veterinarian's List, which documents all horses that the commission veterinarian determines to be unfit for racing. Finally, it establishes procedures for the post-mortem examination of horses that die or are euthanized on the grounds of a licensed racing association or training center under the jurisdiction of the commission.

(b) The necessity of this administrative regulation: This regulation is necessary to fulfill the statutory mandates found in KRS 230.215(2) and KRS 230.240(2). KRS 230.215(2) states that, [I]t is hereby declared the purpose and intent of this chapter in the interest of the public health, safety, and welfare, to vest in the racing commission forceful control of horse racing in the Commonwealth with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth…

KRS 230.240(2) states, The racing commission shall promul-

gate administrative regulations for effectively preventing the use of improper devices, and restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. The racing commission may acquire, operate, and maintain, or contract for the maintenance and operation of, a testing laboratory and related facilities, for the purpose of saliva, urine, or other tests, and to purchase supplies and equipment for and in connection with the laboratory or testing processes…

Without this administrative regulation, the commission would be unable to effectively fulfill the statutory mandates set forth above.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) mandates that the commission establish the conditions under which standardbred racing and pari-mutuel wagering thereon shall be conducted in Kentucky and charges it to, "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth." KRS 230.240(2) further requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race.

This regulation both identifies regulated substances and establishes protocols by which the commission can collect biologic specimens from horses and test those specimens for drugs or stimulants. In so doing, it allows the commission to "maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth." See KRS 230.215.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 230.215 requires the commission to regulate horse racing in Kentucky "free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth." KRS 230.240 requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race.

This administrative regulation provides the specific policies, prohibitions, protocols and procedures necessary to fulfill the statutory mandates set forth in KRS 230.215 and KRS 230.240. It also provides notice to owners and trainers regarding what medications and practices are, or are not, permitted.

(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 addition to a number of technical and formatting changes, the amendment:

- Provides new definitions to make the regulation consistent with other administrative regulations in Title 811 KAR, Chapter 1;
- Prohibits the use of adjunct bleeder medications;
- Amends the rules regarding eligibility to race on or off furosemide to allow greater flexibility to owners and trainers;
- Prohibits the use of any NSAID other than the permitted NSAIDS, and the use of multiple NSAIDS, within 48 hours of a race;
- Establishes a secondary threshold for phenylbutazone;
- Establishes a secondary threshold for flunixin;
- Eliminates the requirement that a trainer with a horse shipping in from out of state certify that he or she had or did not have control of a horse for sixty days prior to the race in which the horse is entered to run; and
- Provides that 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 as provided in 810 KAR 1:012, Section 14.

(b) The necessity of the amendment to this administrative regulation: The landscape of horse racing – as it pertains to the use of stimulants, drugs and other improper substances – is constantly changing and the commission must periodically amend its administrative regulations to keep pace with these developments. This amendment reflects industry-wide policy changes and is necessary to ensure that the commission's regulatory framework accounts for recent developments in medical science.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which standardbred racing and pari-mutuel wagering thereon shall be conducted in Kentucky and charges it to, "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth." KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This amendment specifically addresses the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race in Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: The amendment allows the commission to keep pace with developments in the medical and pharmaceutical industries. It also ensures that Kentucky's regulatory framework is consistent with industry wide trends in this area which results in greater uniformity of rules among various racing jurisdictions.

(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 many of the commission's roughly 18,000 licensees, either directly or indirectly, including owners, trainers and their employees, veterinarians, drivers, racing associations and their employees, and the commission itself. It will directly affect owners, trainers and veterinarians, who will have to comply with the amended regulation. It will affect the commission, which is charged with administering and enforcing the rules. It will affect the commission's official laboratory, which will be required to perform and report testing consistent with the amendment. It will indirectly affect the racing associations and wagering patrons, who will have increased confidence that standardbred racing in Kentucky is "free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices." It will affect drivers, grooms and any other persons who have direct contact with the racehorses, in that the amendment provides a strong deterrent to putting their health, safety and welfare at risk through the use of prohibited substances.

(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 owners and trainers and practicing veterinarians will be required to:

- Comply with the adjusted threshold levels for certain drugs;
- State whether a horse will or will not run with furosemide at the time the horse is entered in a race; and
- Cease using adjunct bleeder medications on race day.
- The commission will be responsible for enforcing the amendments to the medication rules.
- The remainder of the entities identified in question (3) will not be required to take any action to comply with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The owners and trainer will not bear any additional expenses as a result of this amendment, and will likely see some cost savings as it relates to administration of furosemide and adjunct bleeder medications on race day.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Each of the entities identified in question 3 will benefit from a more thorough, up-to-date and flexible medication policy.

- All licensees, including owners, trainers and racing associations, and the commission will benefit from the wagering public's in-

creased confidence in the integrity of horse racing;
- Owners and trainers will have greater flexibility with respect to the use of furosemide and most likely will see a reduction in its cost;
- Any individuals who come into contact with racehorses competing in Kentucky will benefit because the regulation provides a strong deterrent to putting their health, safety and welfare at risk through the use of prohibited substances; and
- Owners and trainers will benefit from the knowledge that they are competing on a level playing field with each other and will have increased confidence that their competitors are not gaining any advantage through the use of improper drugs or stimulants or other improper acts.

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

(a) Initially: There will be no cost to implement this regulation initially or on a continuing basis.

(b) On a continuing basis: There will be no cost to implement this regulation initially or 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 drug testing described in the regulation is paid for by the racing associations.

(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: The regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to the affected 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. Kentucky Revised Statutes 230.215, 230.225, 230.260, 230.290, 230.310, 230.320.

4. Estimate the effect of this administrative regulation on the expenditures and revenues 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 amendment will not result in any additional costs to the commission.

(d) How much will it cost to administer this program for subsequent years? The amendment will not result in any additional costs to the commission.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amendment)

811 KAR 1:095. Disciplinary measures and penalties.

RELATES TO: KRS 230.215, 230.260[~~(1), (3)~~], 230.265[~~(2)~~], 230.290[~~(2)~~], 230.300, 230.320[~~(1), EO 2008-668~~]

STATUTORY AUTHORITY: KRS 230.215[~~(2)~~], 230.240[~~(2)~~], 230.260[~~(3), EO 2008-668~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(3) authorize the commission to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. [~~EO 2008-668, effective July 3, 2008, established the Kentucky Horse Racing Commission and transferred all authority, functions, and responsibilities of the Kentucky Horse Racing Authority to the commission.~~] This administrative regulation establishes the disciplinary powers and duties of the judges and the commission.

Section 1. Definitions. (1) "Associated person" means the spouse of an inactive person, or a companion, family member, employer, employee, agent, partnership, partner, corporation or other entity whose relationship, whether financial or otherwise, with an inactive person would give the appearance that the other person or entity would care for or train a horse, or perform veterinarian services on a horse for the benefit, credit, reputation, or satisfaction of the inactive person.

(2) "Class A drug" means a drug, medication, or substance classified as a Class A drug, medication, or substance in the schedule.

(3) "Class B drug" means a drug, medication, or substance classified as a Class B drug, medication, or substance in the schedule.

(4) "Class C drug" means a drug, medication, or substance classified as a Class C drug, medication, or substance in the schedule.

(5) "Class D drug" means a drug, medication, or substance classified as a Class D drug, medication, or substance in the schedule.

(6) "Companion" means a person who cohabits with or shares living accommodations with an inactive person.

(7) "Inactive person" means a trainer or veterinarian who has his or her license denied or suspended or revoked for thirty (30) or more days pursuant to 811 KAR Chapter 1 or KRS Chapter 230.[~~this administrative regulation pertaining to:~~

~~(a) A violation involving a Class A drug;~~

~~(b) A second or third violation involving a Class B drug in which the person's licensing privileges have been suspended or revoked for six (6) months or longer;~~

~~(c) A third or subsequent violation of 811 KAR 1:090 for an excessive TCO2 level; or~~

~~(d) A third or subsequent violation of 811 KAR 1:090 involving shock wave or blood gas machines.~~]

(8) "NSAID" means a non-steroidal anti-inflammatory drug.

(9) "Primary threshold" means the thresholds for phenylbutazone, flunixin, and ketoprofen provided in 811 KAR 1:090, Section 8(2)(c), (3)(c), and (4)(c), respectively.

(10) "Schedule" means the Kentucky Horse Racing Commission Uniform Drug, Medication, and Substance[~~and Medication~~] Classification Schedule as provided in 811 KAR 1:093.

(11) "Secondary threshold" means the thresholds for phenylbutazone and flunixin provided in 811 KAR 1:090, Section 8(6)(b) and (c).

(12)[~~(9)~~] "Withdrawal guidelines" means the Kentucky Horse Racing Commission Withdrawal Guidelines [~~for~~]Standardbreds as provided in 811 KAR 1:093.

Section 2. General Provisions. (1) An alleged violation of 811 KAR 1:090 shall be adjudicated in accordance with this administra-

tive regulation, and with 811 KAR 1:100, 811 KAR 1:105, and KRS Chapter 13B.

(2) If a drug, medication, or substance is found to be present in a pre-race[~~prerace~~] or post-race[~~postrace~~] sample or possessed or used by a licensee at a location under the jurisdiction of the commission that is not classified in the schedule, the commission may establish a classification after consultation with either or both of the Association of Racing Commissioners International and the Racing and Medication Consortium or their respective successors.

(3) The judges and the commission shall consider any mitigating or aggravating circumstances properly presented when assessing penalties pursuant to this administrative regulation. Evidence of full compliance with the withdrawal guidelines shall be considered by the judges and the commission as a mitigating factor to be used in determining violations and penalties.

(4) Pursuant to KRS 230.320, the commission may suspend or revoke the commission-issued license of an owner, trainer, veterinarian, or other licensee.

(5) A licensee whose license has been suspended or revoked in any racing jurisdiction or a horse that has been deemed ineligible to race in any racing jurisdiction[~~suspended~~] shall be denied access to locations under the jurisdiction of the commission during the term of the suspension or revocation.

(6) A suspension or revocation shall be calculated in calendar days, unless otherwise specified by the judges or the commission in a ruling or order.

(7) Written or printed notice of the assessment of a penalty, including a written warning, shall be made to the person penalized. The notice shall be posted immediately at the office of the association and sent to the commission, the United States Trotting Association, and the Association of Racing Commissioners International, or their successors, to be posted on their respective official Web sites.[~~A person assessed a penalty pursuant to this administrative regulation shall have his or her name and the terms of his or her penalty placed on the official Web site of the Commission.~~] If an appeal is pending, that fact shall be so noted.

(8) A horse administered a substance in violation of 811 KAR 1:090 may be required to pass a commission-approved examination pursuant to 811 KAR 1:020, Section 5, or be placed on the veterinarian's list pursuant to 811 KAR 1:090, Section 18.

(9) A person who claims a horse may void the claim for certain violations of 811 KAR 1:090 and receive reimbursement for reasonable costs associated with the claim as provided in 811 KAR 1:035, Section 3(14)(a)(3).

(10) To protect the racing public and ensure the integrity of racing in Kentucky[~~the Commonwealth~~], a trainer whose penalty for a prior Class A violation or for a prior Class B third offense violation under this administrative regulation has not been finally adjudicated may, if stall space is available, be required to house a horse that the trainer has entered in a race in a designated stall for the twenty-four (24) hour period prior to post time of the race in which the horse is entered. If the judges require the trainer's horse to be kept in a designated stall, there shall be twenty-four (24) hour surveillance of the horse by the association and the cost shall be borne by the trainer.

(11)[~~(9)~~] A veterinarian who has engaged in prohibited practices in violation of 811 KAR 1:090[~~,~~] shall be reported to the Kentucky Board of Veterinary Examiners and the state licensing board of veterinary medicine by the judges.

(12)[~~(10)~~] An administrative action or the imposition of penalties pursuant to this administrative regulation shall not constitute a bar or be considered jeopardy to prosecution of an act that violates the criminal statutes of Kentucky.

(13)[~~(11)~~] If a person is charged with committing multiple or successive overages involving a Class C or Class D drug, medication, or substance, the judges or the commission may charge the person with only one (1) offense if the person demonstrates that he or she was not aware that overages were being administered because the positive test results showing the overages were unavailable to the person charged. In this case, the person alleging that he or she was not aware of the overages shall bear the burden of proving that fact to the judges or the commission.

(14)[~~(12)~~] Any person who has been fined under this administrative regulation shall be suspended until the fine has been paid in full.

(15)[~~(13)~~] A fine shall not be paid directly or indirectly by a person other than the person upon whom it is imposed and any payment made shall not serve to abate or satisfy any penalty imposed.

(16)[~~(14)~~] Written or printed notice of the assessment of a penalty shall be made to the person penalized, notice shall be posted immediately at the office of the association, and notice shall be forwarded immediately to the office of the commission, the United States Trotting Association, and the Association of Racing Commissioners International by the presiding judge or clerk of the course.

(17)[~~(15)~~] If the penalty is for a driving violation and does not exceed in time a period of five (5) days, the driver may complete the engagement of all horses declared in before the penalty becomes effective. The driver may drive in stake, futurity, early closing and feature races, during a suspension of five (5) days or less, but the suspension shall be extended one (1) day for each date the driver drives in a race.

(18)[~~(16)~~] A horse shall not have the right to compete while owned or controlled wholly or in part by a person whose license has been suspended or revoked. An entry made by or for a licensee whose license has been suspended or revoked or for a horse which has been suspended shall be held liable for the entrance fee without the right to compete unless the penalty is removed.

(19)[~~(17)~~] An association shall not willfully allow a person whose license has been suspended or revoked to drive in a race, or a suspended or disqualified horse to start in a race or a performance against time.

(20)[~~(18)~~] An association shall not willfully allow the use of its track or grounds by a licensee whose license has been suspended or revoked, or a horse that has been suspended.

(21)[~~(19)~~] If a person is excluded from a pari-mutuel association by the association, the commission shall be notified.

(22)[~~(20)~~] A person subject to current suspension, revocation, or expulsion shall not act as an officer of an association. An association shall not, after receiving notice of the penalty, employ or retain in its employ an expelled, suspended, disqualified, or excluded person at or on the track during the progress of a race meeting.

(23)[~~(21)~~] A licensee that has been suspended shall serve any suspension imposed:

(a) During the current race meet, if there are enough remaining days to serve out the suspension;

(b) During the next regularly scheduled race meet at the operating race track where the infraction took place if there are not enough remaining days to serve out the suspension; or

(c) During a race meet at another operating track in this state where the licensee seeks to engage in the activity for which he or she is licensed if the track where the infraction took place closes before another race meet is held at that track.

(24)[~~(22)~~] A penalty imposed by the United States Trotting Association or the racing commission, or other governing body, of any racing jurisdiction[~~commissions of other states~~] shall be recognized and enforced by the commission unless application is made for a hearing before the commission, during which the applicant shall show cause as to why the penalty should not be enforced against him in Kentucky[~~this state~~].

Section 3. Prior Offenses. [~~(1)~~]A prior offense occurring in Kentucky or any other racing jurisdiction shall be considered[~~, in accordance with the requirements of this section,~~] by the judges and by the commission in assessing penalties. [~~A prior offense occurring in another racing jurisdiction shall be considered by the judges and the Commission in assessing penalties.~~]The judges shall attach to a penalty judgment a copy of the offender's prior record listing violations that were committed both inside and outside of Kentucky.[~~(2) A prior offense occurring before June 1, 2007 shall not be considered.~~

~~(3) A prior offense involving a Class C drug or Class D drug may be considered as a prior offense if the act that constituted the offense was committed after June 1, 2007 and within one (1) year of the offense for which the person stands charged.~~

~~(4) A prior offense involving a Class A or B drug may be con-~~

~~sidered as a prior offense if the act that constituted the offense was committed after June 1, 2007.~~

~~(5) A prior offense shall not be considered for purposes of enhancing a penalty if the drug, medication or substance that was the subject of the prior offense was of a lower class, pursuant to the Schedule, than the drug, medication or substance that is the subject of the offense for which the person stands charged.~~]

Section 4. Penalties for Violations Not Related To Drugs or Medications. (1) A licensee who commits a violation classified as a Category 1 violation shall be subject to some or all of the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:

(a) A suspension or revocation of licensing privileges from zero days to thirty (30) days; and

(b) Payment[~~punishable by a suspension or revocation of licensing privileges from zero to thirty (30) days, in proportion to the seriousness of the violation and the facts of the case. The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to the payment~~] of a fine not to exceed $5,000.

(2) A licensee who commits a violation classified as a Category 2 violation shall be subject to some or all of the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:

(a) A suspension or revocation of licensing privileges from thirty (30) days to sixty (60) days; and

(b) Payment[~~punishable by a suspension or revocation of licensing privileges from thirty (30) to sixty (60) days in proportion to the seriousness of the violation and the facts of the case. The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to the payment~~] of a fine not to exceed $10,000.

(3) A licensee who commits a violation classified as a Category 3 violation shall be subject to some or all of the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:

(a) A suspension or revocation of licensing privileges from sixty (60) days to permanent suspension or revocation; and

(b) Payment[~~punishable by a suspension or revocation of licensing privileges from sixty (60) days to permanent suspension or revocation in proportion to the seriousness of the violation. The licensee whose licensing privileges may be suspended or revoked and the Commission may enter in an agreement to mitigate the suspension or revocation by agreeing to the payment~~] of a fine up to $50,000[~~commensurate with the seriousness of the violation~~].

(4) A violation of 811 KAR Chapter 1 not otherwise specifically addressed shall be a Category 1 violation and shall be subject to the penalties set forth in subsection (1) of this section.

Section 5. Penalties for Violations Relating to Class A, B, C, or D Drugs. (1) Class A drug. A horse that tests positive for a Class A drug shall be disqualified and listed as unplaced and all purse money shall be forfeited. In addition, a licensee who administers, or is a party to or responsible for administering a Class A drug to a horse, [~~in violation of 811 KAR 1:090,~~]shall be subject to some or all of the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:

(a) For a first offense:

1. A minimum one (1) year suspension, absent mitigating circumstances. The presence of aggravating factors may be used to impose a maximum of a three (3) year suspension or revocation[~~of licensing privileges from zero to three (3) years, in proportion to the seriousness of the violation and the facts of the case, and forfeiture of purse money won~~]. Section 9[~~8~~] of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked; and[~~.~~]

2. Payment[~~The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment~~] of a fine of $5,000 to $10,000.

(b) For a second offense:

1. A minimum three (3) year suspension or revocation, absent mitigating circumstances. The presence of aggravating factors may be used to impose a maximum of a five (5) year suspension or revocation[~~of licensing privileges from three (3) to five (5) years in proportion to the seriousness of the violation and the facts of the case, and forfeiture of purse money won~~]. Section 9[~~8~~] of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked; and[~~.~~]

2. Payment[~~The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment~~] of a fine of $10,000 to $20,000.

(c) For a third lifetime offense in any racing jurisdiction:

1. A minimum five (5) year suspension or revocation, absent mitigating circumstances. The presence of aggravating factors may be used to impose a maximum of a lifetime[~~suspension or~~] revocation[~~of licensing privileges for not less than five (5) years in proportion to the seriousness of the violation and the facts of the case, and forfeiture of purse money won. A revocation of licensing privileges may be permanent~~]. Section 9[~~8~~] of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked; and[~~.~~]

2. Payment[~~The licensee whose license may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment~~] of a fine of $20,000 to $50,000.

(d) Horse ineligible. A horse that tests positive for a Class A drug shall be ineligible to race[~~Suspension of the owner's horse. A horse administered a Class A drug, in violation of 811 KAR 1:090, shall be subject to suspension from racing~~] in Kentucky as follows:

1. For a first offense, the horse shall be ineligible[~~ a suspension~~] from zero days to sixty (60) days;

2. For a second offense in a horse owned by the same owner, the horse shall be ineligible[~~- a suspension~~] from sixty (60) days to[~~-~~] 180 days; and

3. For a third offense in a horse owned by the same owner, the horse shall be ineligible[~~- a suspension~~] from 180 days to[~~–~~] 240 days.

(2) Class B drug. A horse that tests positive for a Class B drug shall be disqualified and listed as unplaced and all purse money shall be forfeited. In addition a licensee who administers, or is a party to or is responsible for administering a Class B drug to a horse [~~in violation of 811 KAR 1:090,~~]shall be subject to some or all of the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:

(a) For a first offense:

1. A minimum fifteen (15) day suspension, absent mitigating circumstances. The presence of aggravating factors may be used to impose a maximum of a sixty (60) day suspension[~~or revocation of licensing privileges from zero to sixty (60) days in proportion to the seriousness of the violation and the facts of the case, and forfeiture of purse money won~~]. Section 9[~~8~~] of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked; and[~~.~~]

2. Payment[~~The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment~~] of a fine of $500 to $1,000.

(b) For a second offense within a 365-day period in any racing jurisdiction:

1. A minimum sixty (60) day suspension, absent mitigating circumstances. The presence of aggravating factors may be used to impose a maximum of a 180 day suspension[~~or revocation of licensing privileges from one (1) month to six (6) months in proportion to the seriousness of the violation and the facts of the case, and forfeiture of purse money won~~]. Section 9[~~8~~] of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked; and[~~.~~]

2. Payment[~~The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment~~] of a fine of $1,000 to $2,500.

(c) For a third offense within a 365-day period in any racing jurisdiction:

1. A minimum 180 day suspension, absent mitigating circumstances. The presence of aggravating factors may be used to impose a maximum of a one (1) year suspension[~~or revocation of licensing privileges from two (2) months to one (1) year in proportion to the seriousness of the violation and the facts of the case, and forfeiture of purse money won~~]. Section 9[~~8~~] of this administrative regulation shall apply to the person whose licensing privileges have been suspended or revoked; and[~~.~~]

2. Payment[~~The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment~~] of a fine of $2,500 to $5,000.

(d) Horse ineligible. A horse that tests positive for a Class B drug shall be ineligible to race in Kentucky [~~Suspension of the owner's horse. A horse administered a Class B drug, in violation of 811 KAR 1:090, shall be subject to a suspension from racing in Kentucky,~~] as follows:

1. For a first offense, the horse shall be ineligible from zero days to sixty (60) days[~~offense - no suspension~~];

2. For a second offense in a horse owned by the same owner, the horse shall be ineligible[~~- a suspension~~] from sixty (60) days to 180[~~zero – 60~~] days; and

3. For a third offense in a horse owned by the same owner, the horse shall be ineligible[~~- a suspension~~] from 180 days to 240 days.[~~sixty (60) – 180 days; or~~]

(3) Class C drug. A licensee who administers, or is a party to or is responsible for administering a Class C drug to a horse or[~~, in violation of 811 KAR 1:090, or is responsible for administering~~] an overage of a permitted NSAID[~~phenylbutazone or flunixin, in violation of 811 KAR 1:090, Section 8,~~] shall be subject to some or all of the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:

(a) For a first offense:

1. A suspension or revocation of licensing privileges from zero days to ten (10) days[~~in proportion to the seriousness of the violation and the facts of the case, and forfeiture of purse money won~~]. Section 9[~~8~~] of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked; and[~~.~~]

2. Payment[~~The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment~~] of a fine of $250 to $500.

(b) For a second offense within a 365-day period:

1. A suspension or revocation of licensing privileges from ten (10) days to thirty (30) days[~~in proportion to the seriousness of the violation and the facts of the case, and forfeiture of purse money won~~]. Section 9[~~8~~] of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked; and[~~.~~]

2. Payment[~~The licensee whose license may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment~~] of a fine of $500 to $1,000.

(c) For a third offense within a 365-day period:

1. A suspension or revocation of licensing privileges from thirty (30) days to sixty (60) days[~~in proportion to the seriousness of the violation and the facts of the case, and forfeiture of purse money won~~]. Section 9[~~8~~] of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked; and[~~.~~]

2. Payment[~~The licensee whose license may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment~~] of a fine of $1,000 to $2,500.

(4) Multiple NSAIDs. A licensee who is responsible for an overage of two (2) of the permitted NSAIDs flunixin, ketoprofen, or phenylbutazone shall be subject to some or all of the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:

(a) For violations where the concentrations of both of the two (2) permitted NSAIDs is above the primary thresholds:

1. For a first offense:

a. A suspension or revocation of licensing privileges from zero days to sixty (60) days. Section 9 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked;

b. Payment of a fine of $500 to $1,000; and

c. Forfeiture of purse money won.

2. For a second offense within a 365-day period:

a. A suspension or revocation of licensing privileges from sixty (60) days to 180 days. Section 9 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked;

b. Payment of a fine of $1,000 to $2,500; and

c. Forfeiture of purse money won.

3. For a third offense within a 365-day period:

a. A suspension or revocation of licensing privileges from 180 days to one (1) year. Section 9 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked;

b. Payment of a fine of $2,500 to $5,000; and

c. Forfeiture of purse money won.

(b) For violations where the concentration of one (1) of the two (2) permitted NSAIDs is above the primary threshold and one (1) of the two (2) permitted NSAIDs is above the secondary threshold:

1. For a first offense:

a. A suspension or revocation of licensing privileges from zero days to fifteen (15) days. Section 9 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked;

b. Payment of a fine of $250 to $750; and

c. Forfeiture of purse money won.

2. For a second offense within a 365-day period:

a. A suspension or revocation of licensing privileges from fifteen (15) days to thirty (30) days. Section 9 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked;

b. Payment of a fine of $750 to $1,500; and

c. Forfeiture of purse money won.

3. For a third offense within a 365-day period:

a. A suspension or revocation of licensing privileges from thirty (30) days to sixty (60) days. Section 9 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked;

b. Payment of a fine of $1,500 to $3,000; and

c. Forfeiture of purse money won.

(c) For violations where the concentrations of both of the two (2) permitted NSAIDs are below the primary threshold and both of the two (2) permitted NSAIDs are above the secondary threshold:

1. For a first offense within a 365-day period:

a. A suspension or revocation of licensing privileges from zero to five (5) days. Section 9 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked; and

b. Payment of a fine of $250 to $500.

2. For a second offense within a 365-day period:

a. A suspension or revocation of licensing privileges from five (5) days to ten (10) days. Section 9 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked; and

b. Payment of a fine of $500 to $1,000.

3. For a third offense within a 365-day period:

a. A suspension or revocation of licensing privileges from ten (10) days to fifteen (15) days. Section 9 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked; and

b. Payment of a fine of $1,000 to $2,500.

(5)[~~(4)~~] Class D drug.

(a) The penalty for a violation involving a Class D drug shall be a written warning to the trainer and owner.

(b) Multiple violations involving a Class D drug may result in some or all of the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:

1. A suspension of licensing privileges from zero days to five (5) days; and[in proportion to the seriousness of the violation and the facts of the case.]

2. Payment[(c) The licensee whose licensing privileges may be suspended and the Commission may enter into an agreement to mitigate the suspension by agreeing to payment] of a fine of not more than $250.

Section 6. Out-of-Competition Testing. Notwithstanding the provisions of Section 5 of this administrative regulation, the following penalties shall apply to violations of 811 KAR 1:240:

(1) For a first offense:

(a) A revocation of licensing privileges for a period of five (5) to ten (10) years as deemed appropriate by the commission in keeping with the seriousness of the violation and facts of the case;

(b) A fine of up to $50,000 as deemed appropriate by the commission in keeping with the seriousness of the violation and facts of the case; and

(c) The forfeiture of purse money earned at a licensed association by a horse in which the presence of a substance described in 811 KAR 1:240, Section 2, was detected, between the time that the specimen was collected and the commission's determination of an actionable finding.

(2) For a second offense:

(a) Permanent revocation of licensing privileges; and

(b) The forfeiture of purse money earned at a licensed association by a horse in which the presence of a substance described in 811 KAR 1:240, Section 2, was detected, between the time that the specimen was collected and the commission's determination of an actionable finding.

(3) Any licensee who has his license revoked for a violation of this administrative regulation shall go before the license review committee before being eligible for a new license.

(4) The horse in which the presence of a substance described in 811 KAR 1:240, Section 2, was detected shall be barred from racing in Kentucky and placed on the veterinarian's list and the judge's list for a period of 180 days and shall remain barred from racing in Kentucky until the horse is determined by the commission to test negative for any substance described in 811 KAR 1:240, Section 2, and is approved for racing by the commission veterinarian and the presiding judge.

(5) The horse in which the presence of a substance described in 811 KAR 1:240, Section 2, was detected remains subject to the requirements of subsection (4) of this section upon sale or transfer of the horse to another owner or trainer before the expiration of 180 days; and until the horse is determined by the commission to test negative for any substance described in 811 KAR 1:240, Section 2, and is approved for racing by the commission veterinarian and the presiding judge.

Section 7[6]. TCO2 penalties. A person who violates or causes the violation of 811 KAR 1:090, Section 20(6), (7), or (8), shall be subject to one (1) or more of the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:

(1) For a first offense involving a positive pre-race test result, the licensee shall be issued a warning.

(2) For a first offense involving a positive post-race test result:

(a) A suspension or revocation of licensing privileges from zero days to ninety (90) days[three (3) months in proportion to the seriousness of the violation and the facts of the case, and forfeiture of purse money won]. Section 9[8] of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked; and[.]

(b) Payment[The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment] of a fine of $1,000 to $1,500.

(3) For a second offense involving a positive pre-race[prerace] or post-race[postrace] test result:

(a) A suspension or revocation of licensing privileges from three (3) months to six (6) months[in proportion to the seriousness of the violation and the facts of the case, and forfeiture of purse money won]. Section 9[8] of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked;[.]

(b) Payment[The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment] of a fine of $1,500 to $3,000; and

(c) Forfeiture of purse money won.

(4) For a third offense involving a positive pre-race[prerace] or post-race[postrace] test result:

(a) A suspension or revocation of licensing privileges from six (6) months to one (1) year[in proportion to the seriousness of the violation and the facts of the case, and forfeiture of purse money won]. Section 9[8] of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked;[.]

(b) Payment[The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment] of a fine of $3,000 to $5,000; and

(c) Forfeiture of purse money won.

(5) Subsequent offenses:

(a) A suspension or revocation of licensing privileges from one (1) year up to a lifetime license revocation; and[in proportion to the seriousness of the violation and the facts of the case.]

(b) [The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to] Forfeiture of purse money won.

(6) Horse ineligible.[Suspension of the owner's horse.] A horse that registers a TCO2 level in violation of 811 KAR 1:090 shall be ineligible to race in[subject to suspension from racing in the Commonwealth of] Kentucky as follows:

(a) For a first offense, no period of ineligibility[- no suspension];

(b) For a second offense, the horse shall be ineligible[- a suspension] from fifteen (15) days to sixty (60) days;

(c) For a third offense, the horse shall be ineligible[- a suspension] from sixty (60) days to 180 days; and

(d) For a fourth offense, the horse shall be ineligible from 180 days[- a suspension from eight (8) months] to one (1) year.

(7) In any instance of a positive pre-race[prerace] TCO2 test result, the horse shall be scratched.

Section 8[7]. Shock Wave Machine and Blood Gas Machine Penalties. A person who violates or causes a violation of 811 KAR 1:090, Section 20(5)[(b)], (9), or (10), regarding a shock wave machine or blood gas machine shall be subject to some or all of the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:

(1) For a first offense:

(a) A suspension or revocation of licensing privileges from thirty (30) days to ninety (90) days;[one (1) to three (3) months in proportion to the seriousness of the violation and the facts of the case.]

(b) Payment[The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment] of a fine of $1,000 to $5,000; and

(c) Forfeiture of purse money won.

(2) For a second offense:

(a) A suspension or revocation of licensing privileges from ninety (90) days to 180 days; [in proportion to the seriousness of the violation and the facts of the case.]

(b) Payment[The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment] of a fine of $5,000 to $10,000; and

(c) Forfeiture of purse money won.

(3) For a third offense:

(a) A suspension or revocation of licensing privileges from 180 days to one (1) year;[in proportion to the seriousness of the violation and the facts of the case.]

(b) Payment[The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an

~~agreement to mitigate the suspension or revocation by agreeing to payment~~] of a fine of $10,000 to $20,000; and

(c) Forfeiture of purse money won.

Section 9[~~8~~]. Persons with a Suspended or Revoked License. (1) A person shall not train a horse or practice veterinary medicine for the benefit, credit, reputation, or satisfaction of an inactive person. The partners in a veterinary practice may provide services to horses if the inactive person does not receive a pecuniary benefit from those services.

(2) An associated person of an inactive person shall not:

(a) Assume the inactive person's responsibilities at a location under the jurisdiction of the commission;

(b) Complete an entry form for a race to be held in [~~the Commonwealth of~~]Kentucky on behalf of or for the inactive person or an owner or customer for whom the inactive person has worked; or

(c) Pay or advance an entry fee for a race to be held in [~~the Commonwealth of~~]Kentucky on behalf of the inactive person or owner or customer for whom the inactive person has worked.

(3) An associated person who assumes the responsibility for the care, custody, or control of an unsuspended horse owned (fully or partially), leased, or trained by an inactive person shall not:

(a) Be paid a salary directly or indirectly by or on behalf of the inactive person;

(b) Receive a bonus or any other form of compensation in cash, property, or other remuneration or consideration;

(c) Make a payment or give remuneration or other compensation or consideration to the inactive person or associated person; or

(d) Train or perform veterinary[~~veterinarian~~] work for the inactive person or an owner or customer of the inactive person at a location under the jurisdiction of the commission.

(4) A person who is responsible for the care, training or veterinary[~~veterinarian~~] services provided to a horse formerly under the care, training or veterinary[~~veterinarian~~] services of an inactive person shall:

(a) Bill customers directly on his or her bill form for any services rendered at or in connection with any race meeting in [~~the Commonwealth of~~]Kentucky;

(b) Maintain a personal checking account totally separate from and independent of that of the inactive person to be used to pay expenses of and deposit income from an owner or client of the inactive person;

(c) Not use the services, directly or indirectly, of current employees of the inactive person; and

(d) Pay bills related to the care, training and racing of the horse from a separate and independent checking account. Copies of the invoices for the expenses shall be retained for not less than six (6) months after the date of the reinstatement of the license of the inactive person or the expiration of the suspension of the inactive person's license.

Section 10[~~9~~]. Other Disciplinary Measures. (1) A person who violates 811 KAR 1:090, Section 6, regarding furosemide [~~and adjunct bleeder medication use~~]on race day shall be treated the same as a person who has committed a Class C drug violation.

(2) [~~A person who violates 811 KAR 1:090, Section 8(1), for exceeding the concentration levels allowed for phenylbutazone or flunixin shall be treated the same as a person who has committed a Class C drug violation.~~

~~(3)~~]A person who violates 811 KAR 1:090, Section 8(6)[~~8(10)~~], for administering a non-steroidal anti-inflammatory drug other than phenylbutazone or flunixin shall be treated the same as a person who has committed a Class C drug violation.

(3)[~~(4) A person who is responsible for more than one oral or intravenous administration of a Nonsteroidal Anti-Inflammatory Drug (NSAID) within twenty-four (24) hours of post time, in violation of 811 KAR 1:090, Section 8(1), shall be treated the same as a person who has committed a Class B drug violation.~~

~~(5)~~] A person who violates 811 KAR 1:090, Section 20(2), shall be treated the same as a person who has committed a drug violation of the same class, as determined by the commission after consultation with the Equine Drug Research Council[~~Class A drug violation~~].

(4)[~~(6)~~] A person who violates 811 KAR 1:090, Section 20(3)[~~20(3)(a)~~], shall be treated the same as a person who has committed a Class A drug violation.

(5)[~~(7) A person who violates Section 2(15) of this administrative regulation shall be subject to a suspension or revocation of licensing privileges for up to one (1) year in proportion to the seriousness of the violation and the facts of the case and shall forfeit purse money won while in violation of Section 2(15). The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of up to $5,000.~~

~~(8)~~] An association in violation of Section 2(19), (20), (21), or (22)[~~2(16), (17), or (19)~~] of this administrative regulation shall, together with its officers, be subject to a suspension or revocation of licensing privileges for up to thirty (30) days and payment of a fine up to $5,000 in keeping with[~~proportion to~~] the seriousness of the violation and the facts of the case.[~~The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of up to $5,000.~~]

Section 11[~~10~~]. Disciplinary Measures by Judges. [~~(1)~~]Upon finding a violation or an attempted violation of 811 KAR Chapter 1 or KRS Chapter 230, if not otherwise provided for in this administrative regulation, the judges may impose one (1) or more of the following penalties:

(1)[~~(a)~~] If the violation or attempted violation may affect the health or safety of a horse or race participant, or may affect the outcome of a race, declare a horse or a licensee ineligible to race or disqualify a horse or a licensee in a race;

(2)[~~(b)~~] Suspend or revoke a person's licensing privileges for a period of time of not more than five (5) years in proportion to the seriousness of the violation and the facts of the case;[~~or~~]

(3)[~~(c)~~] Cause a person, licensed or unlicensed, found to have interfered with, or contributed toward the interference of the orderly conduct of a race or race meeting, or person whose presence is found by the judges to be inconsistent with maintaining the honesty and integrity of the sport of horse racing, to be excluded or ejected from association grounds or from a portion of association grounds; and[~~.~~]

(4) Payment[~~(2) The licensee whose licensing privileges may be suspended or revoked and the judges may enter into an agreement to mitigate the suspension or revocation by agreeing to payment~~] of a fine in an amount not to exceed $50,000 as deemed appropriate by the commission in keeping with[~~$5,000 in proportion to~~] the seriousness of the violation and the facts of the case.

Section 12[~~11~~]. Disciplinary Measures by the Commission. (1) Upon finding a violation or an attempted violation of 811 KAR Chapter 1 or KRS Chapter 230, if not otherwise provided for in this administrative regulation, the commission may impose one (1) or more of the following penalties:

(a) If the violation or attempted violation may affect the health or safety of a horse or race participant, or may affect the outcome of a race, declare a horse or a licensed person ineligible to race or disqualify a horse or a licensed person in a race;

(b) Suspend or revoke a person's licensing privileges for a period of time of not more than five (5) years in proportion to the seriousness of the violation;[~~or~~]

(c) Cause a person found to have interfered with or contributed toward the interference of the orderly conduct of a race or race meeting, or person whose presence is found by the commission to be inconsistent with maintaining the honesty and integrity of horse racing, to be excluded or ejected from association grounds or a portion of association grounds; and[~~.~~]

(d) Payment[~~(2) The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment~~] of a fine of up to $50,000 as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case.

(2)[~~(3)~~] Upon appeal of a matter determined by the judges the commission may:

(a) Order a [~~or~~]hearing de novo of a matter determined by the

judges; and

(b)[,] Reverse or revise the judges' ruling in whole or in part.[;] except as to findings of fact by the judges' ruling regarding matters that occurred during or incident to the running of a race and as to the extent of disqualification fixed by the judges for a foul in a race.[~~Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "The Kentucky Horse Racing Commission Uniform Drug and Medication Classification Schedule", 9/08; and~~

~~(b) "The Kentucky Horse Racing Commission Withdrawal Guidelines for Standardbreds", 09/08.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Pike, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Kentucky Horse Racing Commission Web site, www.khra.ky.gov.~~]

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

APPROVED BY AGENCY: May 10, 2012

FILED WITH LRC: May 11, 2012 at 3 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held be held on June 27, 2012 at 9:00 a.m., at The Red Mile, The Red Mile Clubhouse, 1200 Red Mile Road, Lexington, Kentucky 40504. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by June 20, 2012, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 2, 2012. 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 penalties for violations of 811 KAR 1:090 and other regulations and statutes thereby giving licensees and other participants notice of consequences of violations.

(b) The necessity of this administrative regulation: This regulation is necessary to fulfill the statutory mandates found in KRS 230.215(2) and KRS 230.240(2). KRS 230.215(2) states that, [I]t is hereby declared the purpose and intent of this chapter in the interest of the public health, safety, and welfare, to vest in the racing commission forceful control of horse racing in the Commonwealth with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth…

KRS 230.240(2) states, The racing commission shall promulgate administrative regulations for effectively preventing the use of improper devices, and restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race.

Without this administrative regulation, the commission would be unable to fulfill the statutory mandates set forth above.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) mandates that the commission establish the conditions under which standardbred racing and pari-mutuel wagering thereon shall be conducted in Kentucky and charges it to, "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth." KRS 230.240(2) further requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This regulation enables the commission to fulfill its statutory mandates by providing a means to enforce its rules and regulations. Along with 811 KAR 1:090, this regulation allows the commission to "maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth." See KRS 230.215.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 230.215 articulates the commission's statutory mandate to regulate horse racing in Kentucky "free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth." KRS 230.240 requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This regulation enables the commission to fulfill its statutory mandates by providing a means to enforce its rules and regulations.

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

(a) How the amendment will change this existing administrative regulation: In addition to a number of technical changes to the regulation, the amendment:

- Provides new definitions to make the regulation consistent with other regulations in Title 811 KAR, Chapter 1;
- Creates a procedure for a claimed horse to be sampled and for the claim to be voided for certain violations of 811 KAR 1:090;
- Clarifies that the Judges will consider prior offenses from any racing jurisdiction when assessing penalties;
- Clarifies that the Judges must consider mitigating and aggravating factors in all cases when assessing penalties.
- Clarifies for all violation levels that the Judges may impose a fine in lieu of or in addition to a suspension and other penalties as deemed appropriate based on the facts of the case.
- Establishes a penalty structure for certain substances based on the amount of the substance detected in the post-race test.
- Includes section on out of competition testing consistent with 811 KAR 1:240.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to keep pace with medical science and provide a fair and effective mechanism for enforcing KHRC rules and regulations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which standardbred racing and pari-mutuel wagering thereon shall be conducted in Kentucky and charges it to, "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth." KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This regulation enables the commission to fulfill its statutory mandates by providing a means to enforce its rules and regulations.

(d) How the amendment will assist in the effective administration of the statutes: This regulation enables the commission to fulfill its statutory mandates by providing a means to enforce its rules and regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all partici-

pants in horse racing in Kentucky, including owners, trainers, drivers, and the commission.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendments to this regulation will not require any particular action on the part of regulated entities. It provides notice to those entities of the potential penalties associated with a rule or regulation violation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are not costs associated with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendments establish a fair penalty structure based on medical science. This regulation provides notice to participants of the potential penalties associated with a rule or regulation violation

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

(a) Initially: There are no costs associated with implementing this administrative regulation.

(b) On a continuing basis: There are no costs associated with implementing this administrative regulation.

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to the affected 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. Kentucky Revised Statutes 230.215, 230.225, 230.240, 230.260, 230.290, 230.310, 230.320.

4. Estimate the effect of this administrative regulation on the expenditures and revenues 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 associated with this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with this administrative regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amendment)

811 KAR 2:096. Medication; testing procedures; prohibited practices[~~of horses~~].

RELATES TO: KRS 230.210, 230.215, 230.240, 230.260, 230.265, 230.290, 230.320 [~~KRS 230.610-230.770~~]

STATUTORY AUTHORITY: KRS 230.215, 230.240, 230.260, 230.320 [~~KRS Chapter 13A~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in Kentucky. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation establishes requirements and controls in the administration of drugs, medications, and substances to horses, governs certain prohibited practices, and establishes trainer responsibilities relating to the health and fitness of horses. [~~To regulate conditions under which quarter horse, appaloosa and Arabian racing shall be conducted in Kentucky. The function of this administrative regulation relates to the use of medication on the horses and requirements and controls thereof.~~]

Section 1. Definitions. (1) "AAS" or "anabolic steroid" means an anabolic androgenic steroid.

(2) "Administer" means to apply to or cause the introduction of a substance into the body of a horse.

(3) "Commission laboratory" means a laboratory chosen by the commission to test biologic specimens from horses taken under the supervision of the commission veterinarian.

(4) "Location under the jurisdiction of the commission" means a licensed race track or training center.

(5) "Permitted NSAIDs" means the following permitted non-steroidal anti-inflammatory drugs: phenylbutazone, flunixin, and ketoprofen, if administered in compliance with Section 8 of this administrative regulation.

(6) "Positive finding" means the commission laboratory has conducted testing and determined that a drug, medication, or substance, the use of which is restricted or prohibited by this administrative regulation, was present in the sample.

(a) For the drugs, medications, or substances listed in Sections 2(3), 6, or 8 of this administrative regulation, it shall be necessary to have a finding in excess of the established concentration level as provided in this administrative regulation for the finding to be considered a positive finding.

(b) Positive findings also include:

1. Substances present in the horse in excess of concentrations at which the substances could occur naturally; and

2. Substances foreign to a horse at concentrations that cause interference with testing procedures.

(7) “Primary sample” means the primary sample portion of the biologic specimen taken under the supervision of the commission veterinarian to be tested by the commission laboratory.

(8) "Split sample" means the split sample portion of the biologic specimen taken under the supervision of the commission veterinarian to be tested by the split sample laboratory.

(9) "Split sample laboratory" means the laboratory approved by the commission to test the split sample portion of the biologic specimen from horses taken under the supervision of the commission veterinarian.

(10) "Test barn" means a fenced enclosure sufficient in size and facilities to accommodate the stabling of horses temporarily detained for obtaining specimens for pre-race and post-race testing.

(11) "Therapeutic AAS" means boldenone, nandrolone, or testosterone.

Section 2. Use of Medication. (1) Therapeutic measures and medication necessary to improve or protect the health of a horse shall be administered to a horse in training under the direction of a licensed veterinarian.

(2) Except as otherwise provided in Sections 4, 5, 6, and 8 of this administrative regulation, while participating in a race, a horse shall not carry in its body any drug, medication, substance, or metabolic derivative, that:

(a) Is a narcotic;

(b) Could serve as an anesthetic or tranquilizer;

(c) Could stimulate, depress, or affect the circulatory, respiratory, cardiovascular, musculoskeletal, or central nervous system of a horse; or

(d) Might mask or screen the presence of a prohibited drug, or prevent or delay testing procedures.

(3) Therapeutic medications shall not be present in excess of established threshold concentrations set forth in this administrative regulation. The threshold for furosemide is set forth in Section 6 of this administrative regulation. The thresholds for permitted NSAIDs are set forth in Section 8 of this administrative regulation.

(4) A substance shall not be present in a horse in excess of a concentration at which the substance could occur naturally if it affects the performance of a horse. It shall be the responsibility of the commission to prove that the substance was in excess of normal concentration levels.

(5) It shall be prima facie evidence that a horse was administered and carried, while running in a race, a drug, medication, substance, or metabolic derivative thereof prohibited by this section if:

(a) A biologic specimen from the horse was taken under the supervision of the commission veterinarian promptly after a horse ran in a race; and

(b) The commission laboratory presents to the commission a report of a positive finding.

(6) The commission shall utilize the Kentucky Horse Racing Commission Uniform Drug, Medication, and Substance Classification Schedule, as provided in 811 KAR 2:093, for classification of drugs, medications, and substances violating this administrative regulation. Penalties for violations of this administrative regulation shall be implemented in accordance with 811 KAR 2:100.

Section 3. Treatment Restrictions. (1) Except as provided in Section 4 of this administrative regulation, a person other than a veterinarian licensed to practice veterinary medicine in Kentucky and licensed by the commission shall not administer a prescription or controlled drug, medication, or other substance to a horse at a location under the jurisdiction of the commission.

(2) The only injectables allowed within twenty-four (24) hours prior to post time of the race in which the horse is entered shall be furosemide, as set forth in Section 6 of this administrative regulation.

(3) Except as provided by subsection (5) of this section, a person other than a veterinarian licensed to practice veterinary medicine in Kentucky and licensed by the commission shall not possess a hypodermic needle, syringe, or injectable of any kind at a location under the jurisdiction of the commission.

(4) A veterinarian licensed to practice veterinary medicine in Kentucky and licensed by the commission shall use only single-use disposable needles and syringes, and shall dispose of them in a container approved by the commission veterinarian.

(5) If a person regulated by the commission has a medical condition that makes it necessary to have a needle and syringe at a location under the jurisdiction of the commission, the person shall request prior permission from the stewards and furnish a letter from a licensed physician explaining why it is necessary for the person to possess a needle and syringe. The stewards may grant approval for a person to possess and use a needle and syringe at a location under the jurisdiction of the commission, but may also establish necessary restrictions and limitations.

(6) A commission employee may accompany a veterinarian at a location under the jurisdiction of the commission and take possession of a syringe, needle, or other device used to administer a substance to a horse.

Section 4. Certain Permitted Substances. Liniments, antiseptics, antibiotics, ointments, leg paints, washes, and other products commonly used in the daily care of horses may be administered by a person, other than a licensed veterinarian if:

(1) The treatment does not include any drug, medication, or substance otherwise prohibited by this administrative regulation;

(2) The treatment is not injected; and

(3) The person is acting under the direction of a licensed trainer or veterinarian licensed to practice veterinary medicine in Kentucky and licensed by the commission.

Section 5. Antiulcer Medications. The following antiulcer medications may be administered orally, at the dosage stated in this section, up to twenty-four (24) hours prior to post time of the race in which the horse is entered:

(1) Cimetidine (Tagamet®): 8-20 mg/kg;

(2) Omeprazole (Gastrogard®): two and two-tenths (2.2) grams;

(3) Ranitidine (Zantac®): eight (8) mg/kg; and

(4) Sulcrafate: 2-4 grams.

Section 6. Furosemide Use on Race Day. (1) Furosemide may be administered, in accordance with this section, to a horse that is entered to compete in a race.

(2)(a) The commission veterinarian shall administer furosemide prior to a race.

(b) If the commission veterinarian is unavailable to administer furosemide to a horse prior to a race, the commission shall approve a licensed veterinarian to perform the administration. The commission shall enter into a contract with any veterinarian who will administer furosemide to a horse prior to a race.

(c) If the furosemide is administered by a veterinarian under contract with the commission, the administering veterinarian shall provide a written report to the commission veterinarian no later than two (2) hours prior to post time of the race in which the horse receiving the furosemide is competing.

(3) Furosemide may be used under the following circumstances:

(a) Furosemide shall be administered at a location under the jurisdiction of the commission, by a single intravenous injection, not less than four (4) hours prior to post time for the race in which the horse is entered.

(b) The furosemide dosage administered shall not exceed 500 mg, nor be less than 150 mg.

(c) The specific gravity of a post-race urine sample shall not be below 1.010. If the specific gravity of the post-race urine sample is determined to be below 1.010, a quantification of furosemide in blood serum or plasma shall be performed. If a horse fails to produce a urine specimen, the commission laboratory shall perform a quantification of furosemide in the blood serum or plasma specimen. Concentrations above 100 nanograms of furosemide per milliliter of blood serum or plasma shall constitute a violation of this section.

(4) After consulting with industry representatives, the commission shall determine the cost of administering furosemide based on prevailing costs of veterinary services and supplies at the time the determination is made. The commission shall maintain records documenting the basis for its determination and the cost shall be prominently posted in the racing office.

Section 7. Furosemide Eligibility. (1)(a) A horse shall be eligible to race with furosemide if the licensed trainer or a licensed veterinarian determines that it would be in the horse's best interests to race with furosemide. Notice that a horse eligible to receive furosemide shall race with or without furosemide shall be made at the time of entry to ensure public notification, including publication in the official racing program.

(b) It shall constitute a violation of this administrative regulation when notice is made pursuant to this section that a horse shall race with furosemide and the post-race urine, blood serum or plasma does not show a detectable concentration of furosemide in the post- race urine, blood serum, or plasma.

(c) Horses eligible for furosemide and entered to start may be monitored by a commission-approved representative during the four (4) hour period prior to post time of the race in which the horse

is entered.

(2) After a horse has been determined to no longer be required to receive furosemide, the horse shall not be eligible to receive furosemide unless the licensed trainer or a licensed veterinarian determines that it would be in the horse's best interest to race with furosemide and the licensed trainer or a licensed veterinarian complies with the requirements of this section.

Section 8. Permitted Non-steroidal Anti-inflammatory Drugs (NSAIDs). (1) One (1) of the following NSAIDs may be used by a single intravenous injection not less than twenty-four (24) hours prior to post time for the race in which the horse is entered if the concentration in the horse's specimen does not exceed the following levels when tested post race:

(a) Phenylbutazone - not to exceed two (2) micrograms per milliliter of blood serum or plasma;

(b) Flunixin - not to exceed twenty (20) nanograms per milliliter of blood serum or plasma; and

(c) Ketoprofen - not to exceed ten (10) nanograms per milliliter of blood serum or plasma.

(2) No NSAID, including the permitted NSAIDs shall be administered within twenty-four (24) hours prior to post time for the race in which the horse is entered.

(3)(a) The use of any NSAID other than the permitted NSAIDs, and the use of multiple permitted NSAIDs shall be discontinued at least forty-eight (48) hours prior to post time for the race in which the horse is entered.

(b) A finding of phenylbutazone below a concentration of one-half (.5) microgram per milliliter of blood serum or plasma shall not constitute a violation of this section.

(c) A finding of flunixin below a concentration of three (3) nanograms per milliliter of blood serum or plasma shall not constitute a violation of this section.

(4) A horse that has been administered an NSAID shall be subject to collection of a biologic specimen under the supervision of the commission veterinarian to determine the quantitative NSAID level present in the horse or the presence of other drugs in the horse.

Section 9. Anabolic Steroids. (1) An exogenous AAS shall not be present in a horse that is racing. The detection of an exogenous AAS or metabolic derivative in a post-race or a pre-race sample after the horse has been entered shall constitute a violation of this administrative regulation.

(2) The detection in a post-race sample of an endogenous AAS or metabolic derivative where the concentration of the AAS, a metabolite, a marker, or any relevant ratio as has been published in peer-reviewed scientific literature deviates from a naturally occurring physiological level shall constitute a violation of this administrative regulation. The following shall be deemed to be naturally occurring physiological levels:

(a) Boldenone (free and conjugated):

1. In male horses other than geldings - 15 ng/ml in urine or 200 pg/ml in blood serum or plasma; and

2. In geldings and female horses, boldenone shall not be permitted.

(b) Nandrolone (free and conjugated):

1. In geldings - 1 ng/ml in urine or 50 pg/ml in blood serum or plasma;

2. In fillies and mares - 1 ng/ml in urine or 50 pg/ml in blood serum or plasma; and

3. In male horses other than geldings - 45 ng/ml of metabolite, 5α-estrane-3β, 17α-diol in urine or a ratio in urine of 5α-estrane-3β, 17α-diol to 5α-estrene-3β, 17α-diol of >1:1.

(c) Testosterone (free and conjugated):

1. In geldings - 20 ng/ml in urine or 25 pg/ml in blood serum or plasma; and

2. In fillies and mares - 55 ng/ml in urine or 25 pg/ml in blood serum or plasma.

(3) In accordance with this subsection, a horse may receive one (1) therapeutic AAS.

(a) The therapeutic AAS shall be given for the sole purpose of treating an existing illness or injury having been diagnosed by the regular attending veterinarian. An owner or trainer who is uncertain about whether a particular purpose is considered to be therapeutic shall consult with the commission prior to administration.

(b) The horse shall be ineligible to race in Kentucky until all of the following have occurred:

1. A minimum of sixty (60) days has passed since the administration of the therapeutic AAS to the horse;

2. A relevant specimen is taken from the horse;

3. The sample is tested for AAS by a laboratory from the approved list established by the commission at the expense of the owner of the horse; and

4. The commission has received a report from the laboratory of a negative finding regarding the sample.

(c) A report from the commission laboratory of a negative finding in a pre-race sample does not provide a safe harbor for the owner, trainer, veterinarian or horse. A report from the commission laboratory of a positive finding in a post-race sample shall be treated as a violation of this administrative regulation even if there was a negative finding by the commission laboratory in a pre-race sample.

(d) Procedures for administration of therapeutic AAS.

1. A therapeutic AAS shall be administered by a licensed veterinarian.

2. Other treatment methods shall be investigated prior to considering the use of therapeutic AAS.

3. Medical records for the horse shall document:

a. Consideration of alternative treatment methods; and

b. The necessity for administering the therapeutic AAS.

4. The administering veterinarian shall record on the Therapeutic AAS Administration Form the following information:

a. The therapeutic AAS administered, the amount in milligrams, route, and site of administration;

b. The date and time of administration;

c. The name, age, sex, color, and registration certificate number of the horse to which the therapeutic AAS is administered; and

d. The diagnosis and justification for administration of the therapeutic AAS to the horse.

5. The Therapeutic AAS Administration Form shall be signed by the veterinarian administering the medication.

6. The Therapeutic AAS Administration Form shall be delivered electronically to the commission equine medical director within seventy-two (72) hours after administration. If the Therapeutic AAS Administration Form cannot be delivered electronically, the veterinarian shall file the form with the equine medical director in person or through the mail. The submitting veterinarian shall confirm receipt by the equine medical director.

(4) Substances referred to in subsections (1) and (2) of this section are "Class B" drugs. A positive test for an exogenous AAS or for an amount of an endogenous AAS in excess of a concentration referred to in subsection (2) of this section shall be subject to the penalties referred to in 811 KAR 2:100.

(5)(a) The detection of a therapeutic AAS or metabolic derivative in any sample in excess of a threshold level set forth in subsection (2) of this section shall constitute a violation.

(b) Each separate therapeutic AAS detected in excess of a threshold level shall constitute a separate violation.

(6) The trainer and veterinarian for the horse shall be charged accordingly and shall be subject to penalties for a violation of this administrative regulation.

(7)(a) A claimed horse may be tested for the presence of an AAS if the claimant requests the test when the claim form is completed and deposited in the association's claim box. The claimant shall bear the costs of the test. The results of the test shall be reported to the chief state steward.

(b) If a test is positive, the claim may be voided at the option of the claimant and the claimant shall be entitled to return of all sums paid for the claimed horse, expenses incurred after the date of the claim, and the costs of testing.

(c) If the test is negative, the claimant shall reimburse the entity paying for the testing or the prior owner for the cost of the testing.

(d) While awaiting test results, a claimant:

1. Shall exercise due care in maintaining and boarding a claimed horse; and

2. Shall not materially alter a claimed horse.

(8) The gender of the horse from which a post-race biologic

specimen is collected shall be identified to the commission veterinarian and the testing laboratory.

(9) Only a licensed veterinarian may possess or administer a therapeutic AAS.

Section 10. Test Barn. (1) During a licensed meet, a licensed association shall provide and maintain a test barn on association grounds.

(2) The test barn shall be a fenced enclosure sufficient in size and facilities to accommodate the stabling of horses temporarily detained for the taking of biologic specimens for pre-race and post-race testing.

(3) The test barn shall be under the supervision and control of the commission veterinarian.

Section 11. Sample Collection, Testing, and Reporting. (1) Sample collection shall be done in accordance with the procedures provided in 811 KAR 2:170 and under the instructions provided by the commission veterinarian.

(2) The commission veterinarian shall determine a minimum sample requirement for the commission laboratory which shall be uniform for each horse and which shall be separated into primary and split samples.

(3) An owner or trainer may request that a split sample be:

(a) Taken from a horse he owns or trains by the commission veterinarian; and

(b) Tested by the split sample laboratory.

(4) The cost of testing under subsection (3) of this section, including shipping, shall be borne by the owner or trainer requesting the test.

(5)(a) Stable equipment other than that necessary for washing and cooling out a horse shall not be permitted in the test barn.

(b) Buckets and water shall be furnished by the commission veterinarian.

(c) If a body brace is to be used on a horse, it shall:

1. Be supplied by the trainer; and

2. Applied only with the permission and in the presence of the commission veterinarian or his designee.

(d) A licensed veterinarian may attend to a horse in the test barn only with the permission and in the presence of the commission veterinarian or his designee.

(6) Within five (5) business days of receipt of notification by the commission laboratory of a positive finding, the commission shall notify the owner and trainer orally or in writing of the positive finding.

(7) The stewards shall schedule a hearing within fourteen (14) calendar days of notification by the commission to the owner and trainer. The hearing may be continued if the stewards determine a continuation is necessary to effectively resolve the issue.

Section 12. Storage and Shipment of Split Samples. (1) Split samples shall be secured and made available for further testing in accordance with the following procedures:

(a) Split samples shall be secured in the test barn in the same manner as the primary samples for shipment to the commission laboratory, as addressed in Section 11 of this administrative regulation, until the primary samples are packed and secured for shipment to the commission laboratory. Split samples shall then be transferred to a freezer or refrigerator at a secure location approved and chosen by the commission;

(b) A freezer or refrigerator for storage of split samples shall be equipped with a lock. The lock shall be secured to prevent access to the freezer or refrigerator at all times except as specifically provided by paragraph (c) of this subsection;

(c) A freezer or refrigerator for storage of split samples shall be opened only for depositing or removing split samples, for inventory, or for checking the condition of samples;

(d) A log shall be maintained by the commission veterinarian that shall be used each time a split sample freezer or refrigerator is opened to specify each person in attendance, the purpose for opening the freezer or refrigerator, identification of split samples deposited or removed, the date and time the freezer or refrigerator was opened, the time the freezer or refrigerator was closed, and verification that the lock was secured prior to and after opening of the freezer or refrigerator. A commission veterinarian or his designee shall be present when the freezer or refrigerator is opened;

(e) Evidence of a malfunction of a split sample freezer or refrigerator shall be documented in the log; and

(f) The commission shall be considered the owner of a split sample.

(2)(a) A trainer or owner of a horse receiving notice of a positive finding may request that a split sample corresponding to the portion of the sample tested by the commission laboratory be sent to the split sample laboratory. The party requesting the split sample shall select from a list of laboratories approved by the commission to perform the analysis.

(b) The request shall be made in writing and delivered to the stewards within three (3) business days after the trainer or owner of the horse receives oral or written notice of the positive finding by the commission laboratory.

(c) A split sample so requested shall be shipped as expeditiously as possible.

(3)(a) The owner or trainer requesting testing of a split sample shall be responsible for the cost of the testing, including the cost of shipping.

(b) Failure of the owner, trainer, or a designee to appear at the time and place designated by the commission veterinarian in connection with securing, maintaining, or shipping the split sample shall constitute a waiver of any right to be present during split sample testing procedures.

(c) Prior to shipment of the split sample, the commission shall confirm:

1. That the split sample laboratory has agreed to provide the testing requested;

2. That the split sample laboratory has agreed to send results to the commission; and

3. That arrangements for payment satisfactory to the split sample laboratory have been made.

(d) The commission shall maintain a list of laboratories approved for the testing of split samples and the list shall be on file at the offices of the commission.

Section 13. Split Sample Chain of Custody. (1) Prior to opening the split sample freezer or refrigerator, the commission shall provide a split sample chain of custody verification form. The form to be used shall be the Split Sample Chain of Custody Form. The form shall be fully completed during the retrieval, packaging, and shipment of the split sample and shall contain the following information:

(a) The date and time the sample is removed from the split sample freezer or refrigerator;

(b) The sample number; and

(c) The address where the split sample is to be sent.

(2) A split sample shall be removed from the split sample freezer or refrigerator by a commission employee after notice to the owner, trainer, or designee thereof and a commission-designated representative shall pack the split sample for shipment in accordance with the packaging procedures directed by the commission. The Split Sample Chain of Custody Form shall be signed by both the owner's representative, if present, and the commission representative to confirm the proper packaging of the split sample for shipment. The exterior of the package shall be secured and sealed to prevent tampering with the package.

(3) The owner, trainer, or designee, if present, may inspect the package containing the split sample immediately prior to transfer to the delivery carrier to verify that the package is intact and has not been tampered with.

(4) The Split Sample Chain of Custody Form shall be completed and signed by the representative of the commission and the owner, trainer, or designee, if present.

(5) The commission representative shall retain the original Split Sample Chain of Custody Form and provide a copy to the owner, trainer, or designee, if requested.

Section 14. Medical Labeling. (1) A licensee on association grounds shall not have within his or her possession, or within his or her personal control, a drug, medication, or other substance that is prohibited from being administered to a horse on a race day unless the product is properly and accurately labeled.

(2) A drug or medication which, by federal or state law, requires a prescription shall not be used or kept on association grounds unless validly prescribed by a duly-licensed veterinarian.

(3) A drug or medication shall bear a prescription label which is securely attached and clearly ascribed to show the following:

(a) The name of the product;

(b) The name, address, and telephone number of the veterinarian prescribing or dispensing the product;

(c) The name of the horse for which the product is intended or prescribed;

(d) The dosage, duration of treatment, and expiration date of the prescribed or dispensed product; and

(e) The name of the trainer to whom the product was dispensed.

Section 15. Trainer Responsibility. (1) A trainer shall be responsible for the condition of a horse in his or her care.

(2) A trainer shall be responsible for the presence of a prohibited drug, medication, substance, or metabolic derivative, including permitted medication in excess of the maximum-allowable concentration, in horses in his or her care.

(3) A trainer shall prevent the administration of a drug, medication, substance, or metabolic derivative that may constitute a violation of this administrative regulation.

(4) A trainer whose horse has been claimed shall remain responsible for a violation of this administrative regulation regarding that horse's participation in the race in which the horse is claimed.

(5) A trainer shall be responsible for:

(a) Maintaining the assigned stable area in a clean, neat, and sanitary condition at all times;

(b) Using the services of those veterinarians licensed by the commission to attend to horses that are on association grounds;

(c) The proper identity, custody, care, health, condition, and safety of horses in his or her care;

(d) Promptly reporting the alteration of the sex of a horse to the horse identifier and the racing secretary;

(e) Promptly reporting to the racing secretary and the commission veterinarian if a posterior digital neurectomy (heel nerving) is performed on a horse in his or her care and ensuring that this fact is designated on its certificate of registration;

(f) Promptly reporting to the racing secretary the name of a mare in his or her care that has been bred and is entered to race;

(g) Promptly notifying the commission veterinarian of a reportable disease or communicable illness in a horse in his or her care;

(h) Promptly reporting the serious injury or death of a horse in his or her care at a location under the jurisdiction of the commission to the stewards and the commission veterinarian and ensuring compliance with Section 22 of this administrative regulation and 810 KAR 1:012, Section 14, governing postmortem examinations;

(i) Maintaining a medication record and medication status of horses in his or her care;

(j) Promptly notifying the stewards and the commission veterinarian if the trainer has knowledge or reason to believe that there has been an administration to a horse of a drug, medication, or other substance prohibited by this administrative regulation or has knowledge or reason to believe that a prohibited practice has occurred as set forth in Section 20 of this administrative regulation;

(k) Ensuring the fitness of every horse in his or her care to perform creditably at the distance entered;

(l) Ensuring that every horse he or she has entered to race is present at its assigned stall for a pre-race soundness inspection as prescribed by 810 KAR 1:024, Section 4(1)(d) and (l) and 4(2);

(m) Ensuring proper bandages, equipment, and shoes;

(n) Ensuring the horse's presence in the paddock at least twenty (20) minutes prior to post time, or at a time otherwise prescribed, before the race in which the horse is entered;

(o) Personally attending in the paddock and supervising the saddling of a horse in his or her care, unless an assistant trainer fulfills these duties or the trainer is excused by the stewards pursuant to 811 KAR 2:045, Section 3(4); and

(p) Attending the collection of a biologic specimen taken from a horse in his or her care or delegating a licensed employee or the owner to do so.

Section 16. Licensed Veterinarians. (1) A veterinarian licensed by the commission and practicing at a location under the jurisdiction of the commission shall be considered under the supervision of the commission veterinarian and the stewards.

(2) A veterinarian shall report to the stewards or the commission veterinarian a violation of this administrative regulation by a licensee.

Section 17. Veterinary Reports. (1) A veterinarian who treats a horse at a location under the jurisdiction of the commission shall submit a Veterinary Report of Horses Treated to be Submitted Daily form to the commission veterinarian containing the following information:

(a) The name of the horse treated;

(b) The type and dosage of drug or medication administered or prescribed;

(c) The name of the trainer of the horse;

(d) The date and time of treatment; and

(e) Other pertinent treatment information requested by the commission veterinarian.

(2) The Veterinary Report of Horses Treated to be Submitted Daily form shall be signed by the treating practicing veterinarian.

(3) The Veterinary Report of Horses Treated to be Submitted Daily form shall be on file not later than the time prescribed on the next race day by the commission veterinarian.

(4) The Veterinary Report of Horses Treated to be Submitted Daily form shall be confidential, and its content shall not be disclosed except in the course of an investigation of a possible violation of this administrative regulation or in a proceeding before the stewards or the commission, or to the trainer or owner of record at the time of treatment.

(5) A timely and accurate filing of a Veterinary Report of Horses Treated to be Submitted Daily form by the veterinarian or his designee that is consistent with the analytical results of a positive test reported by the commission laboratory may be used as a mitigating factor in determining the appropriate penalties pursuant to 811 KAR 2:100.

(6) A veterinarian having knowledge or reason to believe that a horse entered in a race has received a drug, medication, or substance prohibited under this administrative regulation or has knowledge or reason to believe that a prohibited practice has occurred as set forth in Section 20 of this administrative regulation shall report this fact immediately to the commission veterinarian or to the stewards.

(7) A practicing veterinarian shall maintain records of all horses treated and of all medications sold or dispensed. The records shall include:

(a) The name of the horse;

(b) The trainer of the horse;

(c) The date, time, amount, and type of medication administered;

(d) The drug or compound administered;

(e) The method of administration; and

(f) The diagnosis.

(8) The records shall be retained for at least sixty (60) days after the horse has raced and shall be available for inspection by the commission.

Section 18. Veterinarian's List. (1) The commission veterinarian shall maintain a list of horses determined to be unfit to compete in a race due to illness, physical distress, unsoundness, infirmity, or other medical condition.

(2) A horse may be removed from the veterinarian's list when, in the opinion of the commission veterinarian, the horse is capable of competing in a race.

(3) The commission veterinarian shall maintain a bleeder list of all horses that have demonstrated external evidence of exercise-induced pulmonary hemorrhage during or after a race or workout as observed by the commission veterinarian.

(4) Every horse that is a confirmed bleeder, regardless of age, shall be placed on the bleeder list and be ineligible to race for the following time periods:

(a) First incident - fourteen (14) days;

(b) Second incident within a 365-day period - thirty (30) days;

(c) Third incident within a 365-day period - 180 days; and

(d) Fourth incident within a 365-day period - barred from racing for life.

(5) For the purpose of counting the number of days a horse is ineligible to run, the day after the horse bled externally shall be the first day of the recovery period.

(6) The voluntary administration of furosemide without an external bleeding incident shall not subject a horse to the initial period of ineligibility as defined in this section.

(7) A horse that has been placed on a bleeder list in another jurisdiction may be placed on the bleeder list maintained by the commission veterinarian.

Section 19. Distribution of Purses, Barn Searches, and Retention of Samples. (1) For all races, purse money shall be paid pursuant to the process provided in 811 KAR 2:035, Section 29(2).

(2) The distribution of purse money prior to the issuance of a final laboratory report shall not be considered a finding that no prohibited drug, medication, substance, or metabolic derivative has been administered to a horse.

(3) After the commission laboratory issues a positive finding, the executive director of the commission or the stewards shall immediately authorize and execute an investigation into the circumstances surrounding the incident that is the subject of the positive finding.

(4) At the conclusion of the investigation, a report shall be prepared and filed with the executive director and chairman of the commission detailing the findings of the investigation.

(5) If the purse money has been distributed, the stewards shall order the money returned at the conclusion of an investigation finding that a prohibited drug, medication, substance, or metabolic derivative was administered to a horse eligible for purse money.

(6) At the conclusion of testing by the commission laboratory and split sample laboratory, the remaining portion of the samples at the commission laboratory and split samples remaining at the test barn may be retained at a proper temperature at a secure facility approved and chosen by the commission. If a report indicating a positive finding has been issued, the commission shall use its best reasonable efforts to retain any remaining portion of the sample until legal proceedings have concluded. The commission may freeze samples.

Section 20. Other Prohibited Practices. (1) A drug, medication, or substance shall not be possessed or used by a licensee, or his designee or agent, to a horse within a nonpublic area at a location under the jurisdiction of the commission:

(a) The use of which may endanger the health and welfare of the horse; or

(b) The use of which may endanger the safety of the rider.

(2) Without the prior permission of the commission or its designee, a drug, medication, or substance that has never been approved by the United States Food and Drug Administration (USFDA) for use in humans or animals shall not be possessed or used at a location under the jurisdiction of the commission. The commission shall determine whether to grant prior permission after consultation with the Equine Drug Research Council.

(3) The following blood-doping agents shall not be possessed or used at a location under the jurisdiction of the commission:

(a) Erythropoietin;

(b) Darbepoietin;

(c) Oxyglobin®;

(d) Hemopure®; or

(e) Any substance that abnormally enhances the oxygenation of body tissue.

(4) A treatment, procedure, or therapy shall not be practiced, administered, or applied which may:

(a) Endanger the health or welfare of a horse; or

(b) Endanger the safety of a rider.

(5) Extracorporeal shock wave therapy or radial pulse wave therapy shall not be used unless the following conditions are met:

(a) A treated horse shall not race for a minimum of ten (10) days following treatment;

(b) A veterinarian licensed to practice by the commission shall administer the treatment;

(c) The commission veterinarian shall be notified prior to the delivery of the machine on association grounds; and

(d) A report shall be submitted by the veterinarian administering the treatment to the commission veterinarian on the Kentucky Horse Racing Commission Veterinary Report of Horses Treated with Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy form within twenty-four (24) hours of treatment.

(6) Other than furosemide, an alkalizing substance that could alter the blood serum or plasma pH or concentration of bicarbonates or carbon dioxide in a horse shall not be used within twenty-four (24) hours prior to post time of the race in which the horse is entered.

(7) Without the prior permission of the commission veterinarian or his designee, based on standard veterinary practice for recognized conditions, a nasogastric tube which is longer than six (6) inches shall not be used for the administration of any substance within twenty-four (24) hours prior to post time of the race in which the horse is entered.

(8) A blood serum or plasma total carbon dioxide (TCO_2) level shall not exceed 37.0 millimoles per liter in a horse; except no violation shall exist if the TCO_2 level is found to be normal for the horse following the quarantine procedure set forth in Section 21 of this administrative regulation.

(9) A blood gas machine shall not be possessed or used by a person other than an authorized representative of the commission at a location under the jurisdiction of the commission; and

(10) A shock wave therapy machine or radial pulse wave therapy machine shall not be possessed or used by anyone other than a veterinarian licensed by the commission at a location under the jurisdiction of the commission.

Section 21. TCO_2 Testing and Procedures. (1)(a) The stewards or commission veterinarian may order the pre-race or post-race collection of blood specimens from a horse to determine the total carbon dioxide concentration in the blood serum or plasma of the horse. The winning horse and other horses, as selected by the stewards, may be tested in each race to determine if there has been a violation of this administrative regulation.

(b) Pre-race testing shall be done at a reasonable time, place, and manner directed by the chief state steward in consultation with the commission veterinarian.

(c) A specimen consisting of at least two (2) blood tubes shall be taken from a horse to determine the TCO_2 concentration in the blood serum or plasma of the horse. If the commission laboratory determines that the TCO_2 level exceeds thirty-seven (37) millimoles per liter, the executive director of the commission shall be informed of the positive finding.

(d) Split sample testing for TCO_2 may be requested by an owner or trainer in advance of the collection of the specimen by the commission veterinarian; however, the collection and testing of a split sample for TCO_2 testing shall be done at a reasonable time, place, and manner directed by the commission veterinarian.

(e) The cost of split sample testing, including the cost of shipping, shall be borne by the owner or the trainer.

(2)(a) If the level of TCO_2 is determined to exceed thirty-seven (37) millimoles per liter and the licensed owner or trainer of the horse certifies in writing to the stewards within twenty-four (24) hours after the notification of the test result that the level is normal for that horse, the owner or trainer may request that the horse be held in quarantine. If quarantine is requested, the licensed association shall make guarded quarantine available for that horse for a period of time to be determined by the stewards, but in no event for more than seventy-two (72) hours.

(b) The expense for maintaining the quarantine shall be borne by the owner or trainer.

(c) During quarantine, the horse shall be retested periodically by the commission veterinarian.

(d) The horse shall not be permitted to race during a quarantine period, but it may be exercised and trained at times prescribed by the licensed association and in a manner that allows monitoring of the horse by a commission representative.

(e) During quarantine, the horse shall be fed only hay, oats, and water.

(f) If the commission veterinarian is satisfied that the horse's

level of TCO_2, as registered in the original test, is physiologically normal for that horse, the stewards:

1. Shall permit the horse to race; and

2. May require repetition of the quarantine procedure set forth in paragraphs (a) through (f) of this subsection to reestablish that the horse's TCO_2 level is physiologically normal.

Section 22. Postmortem Examination. (1) 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 provided in 810 KAR 1:012, Section 14.

(2) The commission shall bear the cost of an autopsy that is required by the commission.

(3) The presence of a prohibited drug, medication, substance, or metabolic derivative thereof in a specimen collected during the postmortem examination of a horse may constitute a violation of this administrative regulation.

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

(a) "Veterinary Report of Horses Treated to be Submitted Daily", KRC-2, 8/97;

(b) "Split Sample Chain of Custody Form", KHRC 18-01 4/12;

(c) "Kentucky Horse Racing Commission Veterinary Report of Horses Treated with Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy", KHRC 18-02, 4/12; and

(d) "Therapeutic AAS Administration Form", KHRC 18-03, 4/12.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Ironworks Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material is also available on the commission's Web site at http://khrc.ky.gov. [~~Section 1. Use of Medication. Full use of modern therapeutic measures and medication calculated to improve or protect the health of a horse may be administered to a horse in training, under the direction of a licensed veterinarian. In the interest of protecting the racing public, health of the horse, safety of the participants in a race, nurturing formful racing, and improvement of the breed of quarter horse, appaloosa, and Arabian.~~

~~(1) No horse while participating in a race shall carry in its body any medication, or drug, or substance, or metabolic derivative thereof, which is a narcotic, or which could serve as a local anesthetic, or tranquilizer, of which could stimulate or depress the circulatory, respiratory, or central nervous system of a horse, thereby effecting its speed.~~

~~(2) Also prohibited are any drugs which might mask or screen the presence of the aforementioned prohibited drugs, or prevent or delay testing procedures.~~

~~(3) Proof of detection by the commission chemist of a medication, or drug, or substance, or metabolic derivative thereof, prohibited by subsection (1) of this section, in a saliva, urine, or blood specimen duly taken under the supervision of the commission veterinarian from a horse promptly after running a race, shall be prima facie evidence that such horse was administered and carried such prohibited medication, drug, or substance, in its body while running in such race in violation of this rule.~~

~~Section 2. When Administration Prohibited. No person other than a licensed veterinarian shall administer or cause to be administered, or participate, or attempt to participate, in any way in the administration to a horse registered for racing of any medication, drug, or substance on the day of a race for which such horse is entered and prior to such race.~~

~~Section 3. Responsibility for Prohibited Administration. (1) Any person found to have administered a medication, drug, or substance which caused or could have caused a violation of Section 1 or 2 of this administrative regulation, or caused, or participated, or attempted to participate in any way in such administration, shall be subject to disciplinary action.~~

~~(2) The licensed trainer of a horse found to have been administered a medication, drug, or substance in violation of Section 1 or 2 of this administrative regulation shall bear the burden of proof showing freedom from negligence in the exercise of a high degree of care in safeguarding such horse from tampering; and, failing to prove such freedom from negligence (or reliance on the professional ability of a licensed veterinarian) shall be subject to disciplinary action.~~

~~(3) The assistant trainer, groom, stable watchman, or any other person having the immediate care and custody of a horse found to have been administered a medication, drug, or substance in violation of Section 1 or 2 of this administrative regulation, if found negligent in guarding or protecting such horse from tampering shall be subject to disciplinary action.~~

~~Section 4. Record of Administrations. Daily reports of any treatment of any horse registered for racing with any medication, drug, or substance shall be submitted by the licensed veterinarian administering or prescribing such treatment, to the commission veterinarian. Detection of any unreported medication, drug, or substance by the commission chemist in a prerace or postrace test may be grounds for disciplinary action.~~

~~(1) Such daily reports shall accurately reflect the identity of the horse treated, diagnosis, time of treatment, type and dosage of medication, drug, or substance, and method of administration.~~

~~(2) Such daily reports shall remain confidential except that the commission veterinarian may compile general data therefrom to assist the commission in formulating policies or rules, and the stewards may review same in investigating a possible violation of these rules.~~

~~Section 5. Commission Veterinarian List. As a guide to owners, trainers, and veterinarians, the commission veterinarian may from time to time publish a list of medications shown by brand and generic names, specifically prohibited or approved for racing. Such list shall not be considered exclusive and medications shown thereon shall be considered only as among those, along with others not so listed, prohibited by general classification under Section 1 of this administrative regulation.~~

~~(1) Only the commission veterinarian may approve and prescribe the use of lasix for racing providing that the commission veterinarian actually sees the horse bleed from the nostrils or the horse is scoped and declared a bleeder. The commission veterinarian must accompany the practitioner when a horse is scoped. If the commission veterinarian agrees that the horse is a bleeder, the horse shall qualify and meet the standards of the meeting. Only the commission veterinarian shall administer lasix prior to a race, which includes qualifying, nonbetting, pari-mutuel races and time trials. The use of oral lasix is forbidden. A schedule for scoping will be maintained by the commission veterinarian. The Kentucky Harness Racing Commission shall keep a record of horses using lasix for the first time.~~

~~(2) A lasix use form (blue) must be submitted to the commission office at the track for approval of the use of lasix.~~

~~(3) If the trainer no longer wishes to use lasix, a no-use form (white) must be submitted to the commission office at the track and the horse must work out for the stewards without the use of lasix and meet the standards of the meeting before being allowed to race without lasix. To be permitted to use lasix again, the horse must work out for the stewards and meet the standards of the meeting.~~

~~(4) No more than 250 milligrams four (4) hours prior to a race shall be administered.~~

~~(5) A fee of ten (10) dollars is to be paid to the commission veterinarian at the time of service by those who wish to have lasix administered to their horses; this fee to cover the services of the commission veterinarian and the cost of testing.~~

~~(6) Testing will be quantitative, with those exceeding thirty (30) nanograms per milliliter of blood tested resulting in a warning to the owner. Testing will be at random, not to exceed six (6) samples per day. A mutual decision to take random samples will be made by the commission veterinarian and the stewards. A second violation shall result in a fine against the owner, not to exceed $5,000.~~

~~Section 6. Detention Area. Each licensed association shall provide and maintain on association grounds a fenced enclosure~~

~~sufficient in size and facilities to accommodate stabling of horses temporarily detained for the taking of sample specimens for chemical testing, and such detention area shall be under the supervision and control of the commission veterinarian.~~

~~Section 7. Horses to be Tested. The stewards may at any time order the taking of a blood, urine, or saliva specimen from any horse entered to be tested. Any owner or trainer may at any time request that a specimen be taken from a horse he owns or trains by the commission veterinarian and tested by the commission chemist, provided the costs of such testing are borne by the owner or trainer requesting such test. In the absence of any such order or request, the commission chemist shall test same, all horses which: finish first in any race; finish first or second in any quinella or exacta race; finish first or second or third in any stakes; and any horse whose performance in a race, in the opinion of the stewards, may have been altered by a prohibited substance.~~

~~Section 8. Procedure for Taking Specimens. (1) All horses from which specimens are to be drawn are to be taken to the detention area at the prescribed time and remain there until released by the commission veterinarian. No person other than the owner, trainer, groom or hotwalker, of a horse to be tested, and no lead pony, shall be admitted to the detention area without permission of the commission veterinarian.~~

~~(2) Stable equipment other than necessary for washing and cooling out a horse are prohibited in the detention area; buckets and water will be furnished by the commission veterinarian. If a body brace is to be used, it shall be supplied by the responsible trainer and administered only with the permission and in the presence of the commission veterinarian. A licensed veterinarian may attend a horse in the detention area only in the presence of the commission veterinarian.~~

~~(3) During the taking of specimens from a horse, the owner, or responsible trainer (who, in the case of a claimed horse shall be the persons whose names such horse raced), or a stable representative designated by such owner or trainer, shall be present and witness the taking of such specimen and so signify in writing.~~

~~(4) All containers previously used for specimens shall be thoroughly cleaned in the commission chemist laboratory and shall be sealed with the laboratory stamp which shall not be broken except in the presence of the witness as provided by subsection (3) of this section. Only distilled water, with or without acetic acid, shall be used to moisten gauze used in collection of saliva. Instruments and utensils used in the taking of samples shall be sterilized after each use.~~

~~(5) Samples taken from a horse by the commission veterinarian or his assistant shall be placed in a container and sealed together with a double identification tag. One (1) portion of such tag bearing a printed identification number shall remain with the sealed container; the other portion of such tag bearing the same printed identification number shall be detached in the presence of the witness as provided by subsection (3) of this section, the commission veterinarian shall thereon identify the horse from which such specimen was taken, as well as the race and day, verified by such witness, and such detached portions of identification tags shall be placed in a sealed envelope by the commission veterinarian for delivery only to the stewards. The commission veterinarian shall take every precaution to ensure that the commission chemist and no member of the laboratory staff shall know the identity of the horse from which a specimen was taken prior to the completion of all testing thereon.~~

~~(a) If after a horse remains a reasonable time in the detention area and a specimen may not be taken from such horse, the commission veterinarian may permit such horse to be returned to its barn and usual surroundings for the taking of a specimen under the supervision of the commission veterinarian.~~

~~(b) With the consent of the trainer or attendant the commission veterinarian may administer to the hose a diuretic to facilitate urination. Quantity, identity and time of administration shall be noted on both portions of the specimen identification tag by the commission veterinarian.~~

~~(c) The commission veterinarian shall be responsible for safeguarding all specimens while in his possession and shall cause such specimens to be delivered only to the commission chemist as soon as possible after sealing, but in such order or in such manner as not to reveal the identity of any horse from which each sample was taken.~~

~~Section 9. Procedure for Testing. (1) The commission chemist shall be responsible for safeguarding and testing each specimen delivered to his laboratory by the commission veterinarian. Each specimen shall be divided into portions so that one (1) portion shall be used for initial testing for unknown substances, and another portion used for confirmation tests. If a sufficient quantity of the specimen is available, a third portion shall be preserved for further testing as the commission may direct.~~

~~(2) The commission chemist shall conduct individual tests on each specimen capable of screening same for prohibited substances, and such other tests as to detect and identify any suspected prohibited substance or metabolic derivative thereof with specificity. Pooling of specimens shall be permitted only with the knowledge and approval of the commission veterinarian.~~

~~(3) Upon the finding of a test negative for prohibited substances, the remaining portions of such specimen may be discarded. Upon the finding of tests suspicious or positive for prohibited substances, such tests shall be reconfirmed, and the remaining portion, if available, of such specimen preserved and protected until such time as the stewards rule it may be discarded.~~

~~(4) The commission chemist shall submit to the state steward a written report as to each specimen tested, indicating thereon by specimen tag identification number, whether such a specimen was tested negative or positive for prohibited substances. Such report shall be submitted within twenty-four (24) hours after the conclusion of the test. The commission chemist shall report test findings to no person other than the state steward or his designated representative.~~

~~(a) In the event the commission chemist should find a specimen suspicious for a prohibited medication, he may request additional time for test analysis and confirmation.~~

~~(b) The racing association shall not make distribution of any purse until given clearance of chemical tests by the stewards.~~

~~(5) The commission chemist will make a further report to the state steward on any substance his tests showed, which are not normal in a horse. These reports shall be confidential and are not evidence for disciplinary action. They can be used as a warning to the trainer or veterinarian, by the stewards, by the commission veterinarian to improve his surveillance and by the Equine Research Program at the University of Kentucky. The residue of specimen material from such test will be preserved by the commission chemist until released by the racing commission.~~

~~(6) In reporting to the stewards a finding of a test positive for a prohibited substance, the commission chemist shall present documentary or demonstrative evidence acceptable in the scientific community and admissible in court in support of such professional opinion as to such positive finding.~~]

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

APPROVED BY AGENCY: May 10, 2012

FILED WITH LRC: May 11, 2012 at 3 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held be held on June 27, 2012 at 9:00 a.m., at The Red Mile, The Red Mile Clubhouse, 1200 Red Mile Road, Lexington, Kentucky 40504. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by June 20, 2012, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 2, 2012. Please send written notification of intent to be heard at the public hearing or written comments on the proposed admin-

istrative 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 governs the administration of drugs, medications, and substances to quarter horse, appaloosa and Arabian horses racing at licensed racing associations in Kentucky. It identifies both permitted and prohibited substances and establishes protocols for the administration of the permitted substances. It establishes procedures for the collection, storage and shipment of biologic specimens that will be tested for regulated substances, as well as the chain of custody and testing protocols for those biologic specimens. The regulation defines a trainer's responsibilities, making the trainer responsible for the condition of any horse in his or her care. It establishes reporting requirements for veterinarians who are treating racehorses in Kentucky and creates a Veterinarian's List, which documents all horses that the commission veterinarian determines to be unfit for racing. Finally, it establishes procedures for the post-mortem examination of horses that die or are euthanized on the grounds of a licensed racing association or training center under the jurisdiction of the commission.

(b) The necessity of this administrative regulation: This regulation is necessary to fulfill the statutory mandates found in KRS 230.215(2) and KRS 230.240(2). KRS 230.215(2) states that, [I]t is hereby declared the purpose and intent of this chapter in the interest of the public health, safety, and welfare, to vest in the racing commission forceful control of horse racing in the Commonwealth with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth…

KRS 230.240(2) states, The racing commission shall promulgate administrative regulations for effectively preventing the use of improper devices, and restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. The racing commission may acquire, operate, and maintain, or contract for the maintenance and operation of, a testing laboratory and related facilities, for the purpose of saliva, urine, or other tests, and to purchase supplies and equipment for and in connection with the laboratory or testing processes…

Without this administrative regulation, the commission would be unable to effectively fulfill the statutory mandates set forth above.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) mandates that the commission establish the conditions under which quarter horse, appaloosa and Arabian racing and pari-mutuel wagering thereon shall be conducted in Kentucky and charges it to, "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth." KRS 230.240(2) further requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race.

This regulation both identifies regulated substances and establishes protocols by which the commission can collect biologic specimens from horses and test those specimens for drugs or stimulants. In so doing, it allows the commission to "maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth." See KRS 230.215.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 230.215 requires the commission to regulate horse racing in the Kentucky "free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth." KRS 230.240 requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race.

This administrative regulation provides the specific policies, prohibitions, protocols and procedures necessary to fulfill the statutory mandates set forth in KRS 230.215 and KRS 230.240. It also provides notice to owners and trainers regarding what medications and practices are, or are not, permitted.

(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 addition to a number of technical and formatting changes, the amendment: Provides new definitions to make the regulation consistent with other administrative regulations in Title 811 KAR, Chapter 2;

Eliminates the requirement that the commission prove that a prohibited substance affected the performance of a horse as a condition precedent to a finding that there has been a violation of the regulation;

Requires race-day furosemide to be administered by the commission veterinarian, unless the commission veterinarian is unavailable to perform the administration, in which case the commission shall contract with a private veterinarian to perform the administration;

Amends the rules regarding eligibility to race on or off furosemide to allow greater flexibility to owners and trainers;

Reduces the primary and secondary thresholds for phenylbutazone;

Adds a secondary threshold for flunixin;

Eliminates the requirement that a trainer with a horse shipping in from out of state certify that he or she had or did not have control of a horse for sixty days prior to the race in which the horse is entered to run; and

Provides that 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 as provided in 810 KAR 1:012, Section 14.

(b) The necessity of the amendment to this administrative regulation: The landscape of horse racing – as it pertains to the use of stimulants, drugs and other improper substances – is constantly changing and the commission must periodically amend its administrative regulations to keep pace with these developments. This amendment reflects industry-wide policy changes and is necessary to ensure that the commission's regulatory framework accounts for recent developments in medical science.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which quarter horse, appaloosa and Arabian racing and pari-mutuel wagering thereon shall be conducted in Kentucky and charges it to, "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth." KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This amendment specifically addresses the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race in Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: The amendment allows the commission to keep pace with developments in the medical and pharmaceutical industries. It also ensures that Kentucky's regulatory framework is consistent with industry wide trends in this area which results in greater uniformity of rules among various racing jurisdictions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administra-

tive regulation: This administrative regulation will affect many of the commission's roughly 18,000 licensees, either directly or indirectly, including owners, trainers and their employees; veterinarians; jockeys; racing associations and their employees; and the commission itself. It will directly affect owners, trainers and veterinarians, who will have to comply with the amended regulation. It will affect the commission which is charged with administering and enforcing the rules. It will affect the commission's official laboratory, which will be required to perform and report testing consistent with the amendment. It will indirectly affect the racing associations and wagering patrons, who will have increased confidence that quarter horse, appaloosa and Arabian racing in Kentucky is "free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices." It will affect jockeys, exercise riders, grooms and any other persons who have direct contact with the racehorses, in that the amendment provides a strong deterrent to putting their health, safety and welfare at risk through the use of prohibited substances.

(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 owners and trainers and practicing veterinarians will be required to:

- Comply with the adjusted threshold levels for certain drugs;
- State whether a horse will or will not run with furosemide at the time the horse is entered in a race; and
- Cease using adjunct bleeder medications on race day.
- The commission will become responsible for the administration of furosemide on race day and will be responsible for enforcing the amendments to the medication rules.
- The remainder of the entities identified in question (3) will not be required to take any action to comply with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The owners and trainers will not bear any additional expenses as a result of this amendment, and will likely see some cost savings as it relates to the administration of furosemide on race day. Because the commission will be responsible for the administration of furosemide, the owners and trainers will only be responsible for the actual cost of administration. The commission will determine the cost of furosemide after consulting with industry representatives and reviewing the prevailing costs of veterinary services and supplies at the time the determination is made. Unlike private veterinarians, this cost will be a straight pass-through and will not be a source of revenue.

The commission will need to hire additional veterinarians to handle the administration of furosemide on race day. This cost will be offset by the cost of administration assessed to the owner or trainer requesting that furosemide be administered.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

- Each of the entities identified in question 3 will benefit from a more thorough, up-to-date and flexible medication policy.
- All licensees, including owners, trainers and racing associations, and the commission will benefit from the wagering public's increased confidence in the integrity of horse racing;
- Owners and trainers will have greater flexibility with respect to the use of furosemide and most likely will see a reduction in its cost;
- Any individuals who come into contact with racehorses competing in Kentucky will benefit because the regulation provides a strong deterrent to putting their health, safety and welfare at risk through the use of prohibited substances; and
- Owners and trainers will benefit from the knowledge that they are competing on a level playing field with each other and will have increased confidence that their competitors are not gaining any advantage through the use of improper drugs or stimulants or other improper acts.

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

(a) Initially: The commission will need to hire veterinarians and an administrative assistant to handle the administration of furosemide on race day. However, the cost of administration will offset the expense of the additional employees.

(b) On a continuing basis: The commission will need to hire veterinarians and an administrative assistant to handle the administration of furosemide on race day. However, the cost of administration will offset the expense of the additional employees.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The drug testing described in the regulation is paid for by the racing associations. The cost of administering furosemide on race day will be assessed to the owner or trainer requesting the administration.

(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 an initial expense to hire veterinarians to administer furosemide on race days. However, this expense will be offset by the money received for the cost of the administration.

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

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to the affected 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. Kentucky Revised Statutes 230.215, 230.225, 230.260, 230.290, 230.310, 230.320.

4. Estimate the effect of this administrative regulation on the expenditures and revenues 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 will be an initial expense to hire veterinarians to administer furosemide on race days. However, this expense will be offset by the money received from the cost of the administration.

(d) How much will it cost to administer this program for subsequent years? There will be an initial expense to hire veterinarians to administer furosemide on race days. However, this expense will be offset by the money received from the cost of the administration.

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

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

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amendment)

811 KAR 2:100. Disciplinary measures and penalties.

RELATES TO: KRS 230.215, 230.260, 230.265, 230.290, 230.300, 230.320, 230.361 [~~KRS 230.610-230.770~~]

STATUTORY AUTHORITY: KRS 230.215, 230.240, 230.260 [~~KRS Chapter 13A~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260(3) authorizes the commission to promulgate necessary and reasonable administrative regulations under which racing shall be conducted in Kentucky. This administrative regulation establishes the penalty structure for rule violations and also establishes disciplinary powers and duties of the stewards and the commission. [~~To regulate conditions under which Arabian, quarter horse and appaloosa racing shall be conducted in Kentucky. The function of this administrative regulation is to outline the disciplinary powers of the stewards and commission.~~]

Section 1. Definitions. (1) "Associated person" means the spouse of an inactive person, or a companion, family member, employer, employee, agent, partnership, partner, corporation, or other entity whose relationship, whether financial or otherwise, with an inactive person would give the appearance that the other person or entity would care for or train a horse or perform veterinarian services on a horse for the benefit, credit, reputation, or satisfaction of the inactive person.

(2) "Class A drug" means a drug, medication, or substance classified as a Class A drug, medication, or substance in the schedule.

(3) "Class B drug" means a drug, medication, or substance classified as a Class B drug, medication, or substance in the schedule.

(4) "Class C drug" means a drug, medication, or substance classified as a Class C drug, medication, or substance in the schedule.

(5) "Class D drug" means a drug, medication, or substance classified as a Class D drug, medication, or substance in the schedule.

(6) "Companion" means a person who cohabits with or shares living accommodations with an inactive person.

(7) "Inactive person" means a trainer or veterinarian who has his or her license denied or suspended or revoked for thirty (30) or more days pursuant to 811 KAR Chapter 2 or KRS Chapter 230.

(8) "NSAID" means a non-steroidal anti-inflammatory drug.

(9) "Primary threshold" means the thresholds for phenylbutazone, flunixin, and ketoprofen provided in 811 KAR 2:096, Sections 8(1)(a), (b), and (c), respectively.

(10) "Schedule" means the Kentucky Horse Racing Commission Uniform Drug, Medication, and Substance Classification Schedule as provided in 811 KAR 2:093.

(11) "Secondary threshold" means the thresholds for phenylbutazone and flunixin provided in 811 KAR 2:096, Section 8(3)(b) and (c), respectively.

(12) "Withdrawal guidelines" means the Kentucky Horse Racing Commission Withdrawal Guidelines Thoroughbred, Quarter Horse, Appaloosa and Arabians as provided in 811 KAR 2:093.

Section 2. General Provisions. (1) An alleged violation of the provisions of KRS Chapter 230 relating to quarter horse, appaloosa and Arabian racing or 811 KAR Chapter 2 shall be adjudicated in accordance with 811 KAR 2:105, KRS Chapter 230, and KRS Chapter 13B.

(2) If a drug, medication, or substance is found to be present in a pre-race or post-race sample or possessed or used by a licensee at a location under the jurisdiction of the commission that is not classified in the schedule, the commission may establish a classification after consultation with either or both of the Association of Racing Commissioners International and the Racing and Medication Testing Consortium or their respective successors.

(3) The stewards and the commission shall consider any mitigating or aggravating circumstances properly presented when assessing penalties pursuant to this administrative regulation. A licensee may provide evidence to the stewards or the commission that the licensee complied fully with the withdrawal guidelines as a mitigating factor.

(4) The commission may suspend or revoke the commission-issued license of an owner, trainer, veterinarian, or other licensee.

(5) A licensee whose license has been suspended or revoked in any racing jurisdiction or a horse that has been deemed ineligible to race in any racing jurisdiction, shall be denied access to locations under the jurisdiction of the commission during the term of the suspension or revocation.

(6) A suspension or revocation shall be calculated in Kentucky racing days, unless otherwise specified by the stewards or the commission in a ruling or order.

(7) A person assessed any penalty, including a written warning, pursuant to this administrative regulation shall have his or her name and the terms of his or her penalty placed on the official Web site of the commission and the Association of Racing Commissioners International, or its successor. If an appeal is pending, that fact shall be so noted.

(8) A horse administered a substance in violation of 811 KAR 2:096 may be required to pass a commission-approved examination pursuant to 811 KAR 2:065, Section 10, or be placed on the veterinarian's list pursuant to 811 KAR 2:096, Section 18.

(9)(a) A claimed horse may be tested for the presence of prohibited substances if the claimant requests the test when the claim form is completed and deposited in the association's claim box. The claimant shall bear the costs of the test. The results of the test shall be reported to the chief state steward.

(b) A person who claims a horse may void the claim if the post-race test indicates the horse had Class A, B, or C drugs in its system, or a TCO2 level exceeding 37.0 millimoles per liter. If the claim is voided, the person claiming the horse shall then be entitled to reimbursement from the previous owner of all reasonable costs associated with the claiming process and the post-race testing, including, but not limited to, the costs of transportation, board, training, veterinary, testing, and any other customary or associated costs or fees.

(c) While awaiting test results, a claimant:

1. Shall exercise due care in maintaining and boarding a claimed horse; and

2. Shall not materially alter a claimed horse.

(10) To protect the racing public and ensure the integrity of racing in Kentucky, a trainer whose penalty for a Class A violation or for a Class B third offense violation has not been fully and finally adjudicated may, if stall space is available, be required to house a horse that the trainer has entered in a race in a designated stall for the twenty-four (24) hour period prior to post time of the race in which the horse is entered. If the stewards require the trainer's horse to be kept in a designated stall, there shall be twenty-four (24) hour surveillance of the horse by the association, and the cost shall be borne by the trainer.

(11) A veterinarian who administers, or is a party to, or facilitates the administration of, or is found to be responsible for the administration of a Class A drug to a horse, in violation of 811 KAR 2:096, or who has engaged in prohibited practices in violation of 811 KAR 2:096, shall be reported to the Kentucky Board of Veterinary Examiners and the state licensing Board of Veterinary Medicine by the stewards.

(12) An administrative action or the imposition of penalties pursuant to this administrative regulation shall not constitute a bar or be considered jeopardy to prosecution of an act that violates the criminal statutes of Kentucky.

(13) If a person is charged with committing multiple or successive overages involving a Class C or D drug, the stewards or the commission may charge the person with only one (1) offense if the person demonstrates that he or she was not aware that overages were being administered because the positive test results showing the overages were unavailable to the person charged. In this case, the person alleging that he or she was not aware of the overages shall bear the burden of proving that fact to the stewards or the commission.

Section 3. Prior Offenses. A prior offense occurring in Kentucky or any other racing jurisdiction shall be considered by the stewards and by the commission in assessing penalties. The stewards shall attach to a penalty judgment a copy of the offender's prior record containing violations that were committed both inside and outside of Kentucky.

Section 4. Penalties for Class A, B, C, and D Drug Violations and NSAID and Furosemide Violations. (1) Class A drug. A horse that tests positive for a Class A drug shall be disqualified and listed as unplaced and all purse money shall be forfeited. In addition, a

licensee who administers, or is a party to or responsible for administering a Class A drug to a horse shall be subject to some or all of the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:

(a) For a first offense:

1. A minimum one (1) year suspension, absent mitigating circumstances. The presence of aggravating factors may be used to impose a maximum of a three (3) year suspension or revocation. Section 8 of this administrative regulation shall apply to the person whose licensing privileges have been suspended or revoked; and

2. Payment of a fine of $5,000 to $10,000.

(b) For a second lifetime offense in any racing jurisdiction:

1. A minimum three (3) year suspension or revocation, absent mitigating circumstances. The presence of aggravating factors may be used to impose a maximum of a five (5) year suspension or revocation. Section 8 of this administrative regulation shall apply to the person whose licensing privileges have been suspended or revoked; and

2. Payment of a fine of $10,000 to $20,000.

(c) For a third lifetime offense in any racing jurisdiction:

1. A minimum five (5) year suspension or revocation, absent mitigating circumstances. The presence of aggravating factors may be used to impose a maximum of a lifetime revocation. Section 8 of this administrative regulation shall apply to the person whose licensing privileges have been suspended or revoked; and

2. Payment of a fine of $20,000 to $50,000.

(d) Horse ineligible. A horse that tests positive for a Class A drug shall be ineligible to race in Kentucky as follows:

1. For a first offense, the horse shall be ineligible from zero days to sixty (60) days;

2. For a second offense in a horse owned by the same owner, the horse shall be ineligible from sixty (60) days to 180 days; and

3. For a third offense in a horse owned by the same owner, the horse shall be ineligible from 180 days to 240 days.

(2) Class B drug. A horse that tests positive for a Class B drug shall be disqualified and listed as unplaced and all purse money shall be forfeited. In addition, a licensee who administers, or is a party to or responsible for administering a Class B drug to a horse shall be subject to some or all of the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:

(a) For a first offense:

1. A minimum fifteen (15) day suspension, absent mitigating circumstances. The presence of aggravating factors may be used to impose a maximum of a sixty (60) day suspension or revocation. Section 8 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked; and

2. Payment of a fine of $500 to $1,000.

(b) For a second offense within a 365-day period in any racing jurisdiction:

1. A minimum sixty (60) day suspension, absent mitigating circumstances. The presence of aggravating factors may be used to impose a maximum of a 180 day suspension. Section 8 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked; and

2. Payment of a fine of $1,000 to $2,500.

(c) For a third offense within a 365-day period in any racing jurisdiction:

1. A minimum 180 day suspension, absent mitigating circumstances. The presence of aggravating factors may be used to impose a maximum of a one (1) year suspension. Section 8 of this administrative regulation shall apply to the person whose licensing privileges have been suspended or revoked; and

2. Payment of a fine of $2,500 to $5,000.

(d) Horse ineligible. A horse that tests positive for a Class B drug shall be ineligible to race in Kentucky as follows:

1. For a first offense, the horse shall be ineligible from zero days to sixty (60) days;

2. For a second offense in a horse owned by the same owner, the horse shall be ineligible from sixty (60) days to 180 days; and

3. For a third offense in a horse owned by the same owner, the horse shall be ineligible from 180 days to 240 days.

(3) Class C drug or overage of either permitted NSAID flunixin or ketoprofen.

(a)The following licensees shall be subject to some or all of the penalties in paragraphs (b) through (d) of this subsection as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:

1. A licensee who administers, or is a party to or responsible for administering a Class C drug to a horse, in violation of 811 KAR 2:096; and

2. A licensee who is responsible for an overage of either permitted NSAID flunixin or ketoprofen in the following concentrations in violation of 811 KAR 2:096:

a. Flunixin, greater than 100 ng/ml; or

b. Ketoprofen, greater than 50 ng/ml.

(b) For a first offense:

1. A suspension or revocation of licensing privileges from zero days to ten (10) days;

2. Payment of a fine of $250 to $500; and

3. Forfeiture of purse money won.

(c) For a second offense within a 365-day period:

1. A suspension or revocation of licensing privileges from ten (10) days to thirty (30) days;

2. Payment of a fine of $500 to $1,000; and

3. Forfeiture of purse money won.

(d) For a third offense within a 365-day period:

1. A suspension or revocation of licensing privileges from thirty (30) days to sixty (60) days;

2. Payment of a fine of $1,000 to $2,500; and

3. Forfeiture of purse money won.

(e) Notwithstanding the above, a licensee who administers, or is a party to or responsible for an overage of either permitted NSAID flunixin or ketoprofen in the following concentrations shall be subject to some or all of the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:

1. Flunixin (21-99 ng/ml); or

2. Ketoprofen (11-49 ng/ml).

a. For a first offense:

(i) A suspension or revocation of licensing privileges from zero days to five (5) days; and

(ii) Payment of a fine of $250 to $500.

b. For a second offense within a 365-day period:

(i) A suspension or revocation of licensing privileges from five (5) days to ten (10) days; and

(ii) Payment of a fine of $500 to $1,000.

c. For a third offense within a 365-day period:

(i) A suspension or revocation of licensing privileges from ten (10) days to fifteen (15) days.

(ii) Payment of a fine of $1,000 to $2,500; and

(iii) Forfeiture of purse money won.

(4) Overage of permitted NSAID phenylbutazone.

(a) A licensee who administers, or is a party to or responsible for an overage of the permitted NSAID phenylbutazone in a concentration of greater than 2.0 mcg/ml and less than 5.1 mcg/ml shall be subject to the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:

1. For a first offense:

a. Minimum penalty of a written warning up to a maximum penalty of a $500 fine; and

b. The horse may not be eligible to enter until it has been approved for racing by the commission veterinarian.

2. For a second offense within a 365-day period:

a. Minimum penalty of a written warning up to a maximum penalty of a $750 fine; and

b. The horse shall not be eligible to enter until it has been approved for racing by the commission veterinarian.

3. For a third offense within a 365-day period:

a. A fine of $500 to $1,000;

b. Forfeiture of purse money won;

c. The horse shall be disqualified and listed as unplaced; and

d. The horse shall not be eligible to enter until it has been approved for racing by the commission veterinarian.

(b) A licensee who administers, or is a party to or responsible for an overage of the permitted NSAID phenylbutazone in a con-

centration of greater than 5.0 mcg/ml shall be subject to the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:

1. For a first offense, payment of a fine from $1,000 to $1,500; and

2. For a second offense within a 365-day period:

a. Payment of a fine from $1,500 to $2,500;

b. A suspension of licensing privileges for fifteen (15) days, unless the stewards or the commission finds mitigating circumstances;

c. Forfeiture of purse money won; and

d. The horse shall be disqualified and listed as unplaced.

3. For a third offense within a 365-day period:

a. A fine of $2,500 to $5,000;

b. A suspension of licensing privileges for thirty (30) days, unless the stewards or the commission finds mitigating circumstances;

c. Forfeiture of purse money won; and

d. The horse shall be disqualified and listed as unplaced.

(5) Furosemide violations.

(a) The following licensees shall be subject to some or all of the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:

1. A licensee who administers, or is party to or responsible for administering an overage of furosemide in a concentration greater than 100 ng/ml; and

2. A licensee who has not administered furosemide when notice has been made that the horse shall run on furosemide pursuant to 811 KAR 2:096, Section 7.

(b) For a first offense:

1. A suspension or revocation of licensing privileges from zero days to five (5) days; and

2. Payment of a fine of $250 to $500.

(c) For a second offense within a 365-day period:

1. A suspension or revocation of licensing privileges from five (5) days to ten (10) days; and

2. Payment of a fine of $500 to $1,000.

(d) For a third offense within a 365-day period:

1. A suspension or revocation of licensing privileges from ten (10) days to fifteen (15) days;

2. Payment of a fine of $1,000 to $2,500; and

3. Forfeiture of purse money won.

(6) Multiple NSAIDs. A licensee who is responsible for an overage of two (2) of the permitted NSAIDs flunixin, ketoprofen, or phenylbutazone shall be subject to some or all of the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:

(a) For violations where the concentrations of both of the two (2) permitted NSAIDs is above the primary thresholds:

1. For a first offense:

a. A suspension or revocation of licensing privileges from zero days to sixty (60) days. Section 8 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked;

b. Payment of a fine of $500 to $1,000; and

c. Forfeiture of purse money won.

2. For a second offense within a 365-day period:

a. A suspension or revocation of licensing privileges from sixty (60) days to 180 days. Section 8 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked;

b. Payment of a fine of $1,000 to $2,500; and

c. Forfeiture of purse money won.

3. For a third offense within a 365-day period:

a. A suspension or revocation of licensing privileges from 180 days to one (1) year. Section 8 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked;

b. Payment of a fine of $2,500 to $5,000; and

c. Forfeiture of purse money won.

(b) For violations where the concentration of one (1) of the two (2) permitted NSAIDs is above the primary threshold and one (1) of the two (2) permitted NSAIDs is above the secondary threshold:

1. For a first offense:

a. A suspension or revocation of licensing privileges from zero days to fifteen (15) days. Section 8 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked;

b. Payment of a fine of $250 to $750; and

c. Forfeiture of purse money won.

2. For a second offense within a 365-day period:

a. A suspension or revocation of licensing privileges from fifteen (15) days to thirty (30) days. Section 8 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked;

b. Payment of a fine of $750 to $1,500; and

c. Forfeiture of purse money won.

3. For a third offense within a 365-day period:

a. A suspension or revocation of licensing privileges from thirty (30) days to sixty (60) days. Section 8 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked;

b. Payment of a fine of $1,500 to $3,000; and

c. Forfeiture of purse money won.

(c) For violations where the concentrations of both of the two (2) permitted NSAIDs are below the primary threshold and both of the two (2) permitted NSAIDs are above the secondary threshold:

1. For a first offense:

a. A suspension or revocation of licensing privileges from zero days to five (5) days. Section 8 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked; and

b. Payment of a fine of $250 to $500.

2. For a second offense within a 365-day period:

a. A suspension or revocation of licensing privileges from five (5) days to ten (10) days. Section 8 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked; and

b. Payment of a fine of $500 to $1,000.

3. For a third offense within a 365-day period:

a. A suspension or revocation of licensing privileges from ten (10) days to fifteen (15) days. Section 8 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked; and

b. Payment of a fine of $1,000 to $2,500.

(7) Class D Drug.

(a) The penalty for a first violation involving a Class "D" drug shall be a written warning to the trainer and owner.

(b) For multiple violations involving a Class "D" drug the licensee may be subject to a suspension of licensing privileges from zero days to five (5) days and a fine of no more than $250 as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case.

Section 5. Out-of-Competition Testing. Notwithstanding the provisions of Section 4 of this administrative regulation, the following penalties shall apply to violations of 811 KAR 2:150:

(1) For a first offense:

(a) A revocation of licensing privileges for a period of five (5) to ten (10) years as deemed appropriate by the commission in keeping with the seriousness of the violation and facts of the case;

(b) A fine of up to $50,000 as deemed appropriate by the commission in keeping with the seriousness of the violation and facts of the case; and

(c) The forfeiture of purse money earned at a licensed association by a horse in which the presence of a substance described in 811 KAR 2:150, Section 2, was detected, between the time that the specimen was collected and the commission's determination of an actionable finding.

(2) For a second offense:

(a) Permanent revocation of licensing privileges; and

(b) The forfeiture of purse money earned at a licensed association by a horse in which the presence of a substance described in 811 KAR 2:150, Section 2, was detected, between the time that the specimen was collected and the commission's determination of an actionable finding.

(3) Any licensee who has his license revoked for a violation of

this administrative regulation shall go before the license review committee before being eligible for a new license.

(4) The horse in which the presence of a substance described in 811 KAR 2:150, Section 2, was detected shall be barred from racing in Kentucky and placed on the veterinarian's list, and the steward's list, for a period of 180 days and shall remain barred from racing in Kentucky until the horse is determined by the commission to test negative for any substance described in 811 KAR 2:150, Section 2, and is approved for racing by the commission veterinarian and the chief state steward.

(5) The horse in which the presence of a substance described in 811 KAR 2:150, Section 2, was detected remains subject to the requirements of subsection (4) of this section upon sale or transfer of the horse to another owner or trainer before the expiration of 180 days; and until the horse is determined by the commission to test negative for any substance described in 811 KAR 2:150, Section 2, and is approved for racing by the commission veterinarian and the chief state steward.

Section 6. TCO2 penalties. A person who violates or causes the violation of 811 KAR 2:096, Section 20(6), (7), or (8), shall be subject to one (1) or more of the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:

(1) For a first offense:

(a) A suspension or revocation of licensing privileges from zero days to three (3) months;

(b) Payment of a fine of $1,000 to $1,500; and

(c) Forfeiture of purse money won.

(2) For a second offense:

(a) A suspension or revocation of licensing privileges from three (3) months to six (6) months;

(b) Payment of a fine of $1,500 to $3,000; and

(c) Forfeiture of purse money won.

(3) For a third offense:

(a) A suspension or revocation of licensing privileges from six (6) months to one (1) year;

(b) Payment of a fine of $3,000 to $5,000; and

(c) Forfeiture of purse money won.

(4) For subsequent offenses:

(a) A suspension or revocation of licensing privileges from one (1) year up to a lifetime license revocation; and

(b) Forfeiture of purse money won.

(5) Horse ineligible. A horse that registers a TCO2 level in violation of 811 KAR 2:096, Section 20(6), (7), or (8), shall be ineligible to race in Kentucky as follows:

(a) For a first offense, no period of ineligibility;

(b) For a second offense in the same horse, the horse shall be ineligible from fifteen (15) days to sixty (60) days;

(c) For a third offense in the same horse, the horse shall be ineligible from sixty (60) days to 180 days; and

(d) For a fourth offense in the same horse, the horse shall be ineligible from 180 days to one (1) year.

Section 7. Shock Wave Machine and Blood Gas Machine Penalties. A person who violates or causes the violation of 811 KAR 2:096, Section (5), (9), or (10), shall be subject to some or all of the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case.

(1) For a first offense:

(a) A suspension or revocation of licensing privileges from one (1) month to three (3) months;

(b) Payment of a fine of $1,000 to $5,000; and

(c) Forfeiture of purse money won.

(2) For a second offense:

(a) A suspension or revocation of licensing privileges from three (3) months to six (6) months;

(b) Payment of a fine of $5,000 to $10,000; and

(c) Forfeiture of purse money won.

(3) For a third offense:

(a) A suspension or revocation of licensing privileges from six (6) months to one (1) year;

(b) Payment of a fine of $10,000 to $20,000; and

(c) Forfeiture of purse money won.

Section 8. Persons with a Suspended or Revoked License. (1) A person shall not train a horse or practice veterinary medicine for the benefit, credit, reputation, or satisfaction of an inactive person. The partners in a veterinary practice may provide services to horses if the inactive person does not receive a pecuniary benefit from those services.

(2) An associated person of an inactive person shall not:

(a) Assume the inactive person's responsibilities at a location under the jurisdiction of the commission;

(b) Complete an entry form for a race to be held in Kentucky on behalf of or for the inactive person or an owner or customer for whom the inactive person has worked; or

(c) Pay or advance an entry fee for a race to be held in Kentucky on behalf of the inactive person or owner or customer for whom the inactive person has worked.

(3) An associated person who assumes the responsibility for the care, custody, or control of an unsuspended horse owned (fully or partially), leased, or trained by an inactive person shall not:

(a) Be paid a salary directly or indirectly by or on behalf of the inactive person;

(b) Receive a bonus or any other form of compensation in cash, property, or other remuneration or consideration;

(c) Make a payment or give remuneration or other compensation or consideration to the inactive person or associated person; or

(d) Train or perform veterinarian work for the inactive person or an owner or customer of the inactive person at a location under the jurisdiction of the commission.

(4) A person who is responsible for the care, training, or veterinarian services provided to a horse formerly under the care, training, or veterinarian services of an inactive person shall:

(a) Bill customers directly on his or her bill form for any services rendered at or in connection with any race meeting in Kentucky;

(b) Maintain a personal checking account totally separate from and independent of that of the inactive person to be used to pay expenses of and deposit income from an owner or client of the inactive person;

(c) Not use the services, directly or indirectly, of current employees of the inactive person; and

(d) Pay bills related to the care, training, and racing of the horse from a separate and independent checking account. Copies of the invoices for the expenses shall be retained for not less than six (6) months after the date of the reinstatement of the license of the inactive person or the expiration of the suspension of the inactive person's license.

Section 9. Other Disciplinary Measures. (1) A person who violates 811 KAR 2:096, Section 20(2), shall be treated the same as a person who has committed a drug violation of the same class, as determined by the commission after consultation with the Equine Drug Research Council.

(2) A person who violates 811 KAR 2:096, Section 20(3), shall be treated the same as a person who has committed a Class A drug violation.

Section 10. Disciplinary Measures by Stewards. Upon finding a violation or an attempted violation of the provisions of KRS Chapter 230 relating to quarter horse, appaloosa and Arabian racing or 811 KAR Chapter 2, if not otherwise provided for in this administrative regulation, the stewards may impose one (1) or more of the following penalties:

(1) If the violation or attempted violation may affect the health or safety of the horse or a participant in a race or may affect the outcome of a race, declare a horse or a licensee ineligible to race or disqualify a horse or licensee in a race;

(2) Suspend or revoke a person's licensing privileges for a period of time of not more than five (5) years as may be deemed appropriate by the stewards in keeping with the seriousness of the violation and the facts of the case;

(3) Cause a person, licensed or unlicensed, found to have interfered with, or contributed toward the interference of the orderly

conduct of a race or race meeting, or person whose presence is found by the stewards to be inconsistent with maintaining the honesty and integrity of the sport of horse racing to be excluded or ejected from association grounds or from a portion of association grounds; or

(4) Payment of a fine in an amount not to exceed $50,000 as may be deemed appropriate by the stewards in keeping with the seriousness of the violation and the facts of the case.

Section 11. Disciplinary measures by the commission. Upon finding a violation or an attempted violation of the provisions of KRS Chapter 230 relating to quarter horse, appaloosa and Arabian racing or 811 KAR Chapter 2, if not otherwise provided for in this administrative regulation, the commission may impose one (1) or more of the following penalties:

(1) If the violation or attempted violation may affect the health or safety of the horse or a participant in a race or may affect the outcome of a race, declare a horse or a licensee ineligible to race or disqualify a horse or licensee in a race;

(2) Suspend or revoke a person's licensing privileges for a period of time of not more than five (5) years as may be deemed appropriate by the commission in keeping with the seriousness of the violation;

(3) Eject or exclude persons from association grounds for a length of time the commission deems necessary; or

(4) Payment of a fine in an amount not to exceed $50,000 as may be deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case. [~~Section 1. Disciplinary Measures by Stewards. Upon the finding of a violation of these rules, or an attempted violation, on association grounds during the conduct of a meeting at which the stewards have been appointed to serve, the stewards may:~~

~~(1) Declare ineligible for racing or disqualify in a race any horse or licensed person.~~

~~(2) Suspend the license of any person involved in such rule violation for any length of time deemed appropriate by the stewards as in keeping with the seriousness of the rule violation.~~

~~(3) Cause any person, licensed or unlicensed, found to have interfered with, or contributed toward the interference of, the orderly conduct of a race or race meeting, or person whose presence is found by the stewards to be inconsistent with maintaining the honesty and integrity of the sport of Arabian, quarter horse or appaloosa racing, to be excluded or ejected from association grounds or any portion of association grounds.~~

~~(4) In the case of a license suspension, the stewards may fix in the alternative a forfeiture not to exceed $250, which sum the licensee may, if he so chooses, pay to the commission in lieu of such imposed license suspension.~~

~~Section 2. Disciplinary Measures by Commission. Upon the finding of a violation of these rules, or an attempted violation, on any association grounds during the conduct of a race meeting in the Commonwealth, the commission may:~~

~~(1) Declare ineligible for racing or disqualify in a race any horse or licensed person.~~

~~(2) Deny, suspend, revoke, or declare void any license applied for or issued by the commission.~~

~~(3) Cause any person, licensed or unlicensed, found to have interfered with, or contributed toward the interference of, the orderly conduct of a race or race meeting or any person whose presence is found by the commission to be inconsistent with maintaining the honesty and integrity of the sport of Arabian, quarter horse or appaloosa racing, to be excluded or ejected from all association grounds or any portion of any association grounds for any length of time the commission may deem the presence of such person remains inconsistent with maintaining the honesty and integrity of the sport of Arabian, quarter horse and appaloosa racing in the Commonwealth.~~

~~(4) Upon appeal and hearing de novo of a matter determined by the stewards, the commission may reverse or revise such stewards' ruling in all respects; except as to findings of fact by the stewards as occurred during an incident to the running of a race and as to the extent of disqualification fixed by the stewards for a foul in a race.~~

~~(5) In lieu of a license suspension or revocation, the commission may fix in the alternative a forfeiture in any amount, which sum the licensee may, if he so chooses, pay to the commission in lieu of an imposed license suspension or revocation. Such forfeitures paid to the commission shall in no event in any way accrue to the personal benefit of any commissioner or stewards.~~]

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

APPROVED BY AGENCY: May 10, 2012

FILED WITH LRC: May 11, 2012 at 3 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held be held on June 27, 2012 at 9:00 a.m., at The Red Mile, The Red Mile Clubhouse, 1200 Red Mile Road, Lexington, Kentucky 40504. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by June 20, 2012, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 2, 2012. 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 penalties for violations of 811 KAR 2:096 and other regulations and statutes thereby giving licensees and other participants notice of consequences of violations.

(b) The necessity of this administrative regulation: This regulation is necessary to fulfill the statutory mandates found in KRS 230.215(2) and KRS 230.240(2).

KRS 230.215(2) states that, [I]t is hereby declared the purpose and intent of this chapter in the interest of the public health, safety, and welfare, to vest in the racing commission forceful control of horse racing in the Commonwealth with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth…

KRS 230.240(2) states, The racing commission shall promulgate administrative regulations for effectively preventing the use of improper devices, and restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race.

Without this administrative regulation, the commission would be unable to fulfill the statutory mandates set forth above.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) mandates that the commission establish the conditions under which thoroughbred racing and pari-mutuel wagering thereon shall be conducted in Kentucky and charges it to, "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth." KRS 230.240(2) further requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This regulation enables the commission to fulfill its statutory mandates by providing a means to enforce its rules and regulations.

Along with 811 KAR 2:096, this regulation allows the commission to "maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Common-

wealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth." See KRS 230.215.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 230.215 articulates the commission's statutory mandate to regulate horse racing in Kentucky "free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth." KRS 230.240 requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This regulation enables the commission to fulfill its statutory mandates by providing a means to enforce its rules and regulations.

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

(a) How the amendment will change this existing administrative regulation: In addition to a number of technical changes to the regulation, the amendment:

Provides new definitions to make the regulation consistent with other regulations in Title 811 KAR, Chapter 2;

Creates a procedure for a claimed horse to be sampled and for the claim to be voided for certain violations of 811 KAR 2:096;

Clarifies that the Stewards will consider prior offenses from any racing jurisdiction when assessing penalties;

Clarifies that the Stewards must consider mitigating and aggravating factors in all cases when assessing penalties.

Clarifies for all violation levels that the Stewards may impose a fine in lieu of or in addition to a suspension and other penalties as deemed appropriate based on the facts of the case.

Establishes a penalty structure for certain substances based on the amount of the substance detected in the post-race test.

Includes section on out of competition testing consistent with 811 KAR 2:150.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to keep pace with medical science and provide a fair and effective mechanism for enforcing KHRC rules and regulations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which thoroughbred racing and pari-mutuel wagering thereon shall be conducted in Kentucky and charges it to, "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth." KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This regulation enables the commission to fulfill its statutory mandates by providing a means to enforce its rules and regulations.

(d) How the amendment will assist in the effective administration of the statutes: This regulation enables the commission to fulfill its statutory mandates by providing a means to enforce its rules and regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all participants in horse racing in Kentucky, including owners, trainers, jockeys, and the commission.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendments to this regulation will not require any particular action on the part of regulated entities. It provides notice to those entities of the potential penalties associated with a rule or regulation violation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are not costs associated with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendments establish a fair penalty structure based on medical science. This regulation provides notice to participants of the potential penalties associated with a rule or regulation violation.

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

(a) Initially: There are no costs associated with implementing this administrative regulation.

(b) On a continuing basis: There are no costs associated with implementing this administrative regulation.

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to the affected 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. Kentucky Revised Statutes 230.215, 230.225, 230.240, 230.260, 230.290, 230.310, 230.320.

4. Estimate the effect of this administrative regulation on the expenditures and revenues 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 associated with this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with this administrative regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(Amendment)

815 KAR 20:100. Joints and connections.

RELATES TO: KRS 198B.040(7), (10), 198B.050(2), 318.130, 318.150

STATUTORY AUTHORITY: KRS 198B.040(10), 318.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the department[~~office~~], after review by the State Plumbing

Code Committee, to promulgate a State Plumbing Code. This administrative regulation establishes the methods that shall be used in joining certain types of piping materials together and denotes the methods that shall be used in securing plumbing fixtures to waste piping outlets. This administrative regulation also identifies the manufacturer's specification number of the material accepted in those installations.

Section 1. Definitions. (1) "ANSI" means the American National Standards Institute and a copy of the ANSI specifications identified in this administrative regulation may be obtained by writing the American National Standards Institute, 1430 Broadway, New York, NY 10018.

(2) "ASTM" means the American Society for Testing Materials and a copy of the ASTM specifications identified in this administrative regulation may be obtained by writing the American Society for Testing Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

Section 2. Water and Airtight Joints. Joints and connections shall be made gas and water tight.

Section 3. Vitrified Pipe Joints; Concrete Pipe Joints; House Sewers - Combined Sewers. (1) Joints in vitrified clay pipe shall be ASTM specification C-425.

(2) Joints in concrete pipe shall be ASTM specifications C-443.

(3) If it is necessary to use piping in other than standard lengths, hot poured joints may be used.

(4) Joints between cast iron pipe and vitrified clay pipe or concrete pipe shall be made either of hot poured bitumastic compound or by a preformed elastomeric ring. The ring shall completely fill the annular space between the cast iron spigot and the vitrified clay or concrete pipe hub.

(5) Joints in pipe and fittings with no more than two (2) pipe sizes between vitrified clay, acrylonitrile-butadiene-styrene or polyvinyl chloride to cast iron pipe and fittings or the joining of either material may be made with proper fittings by using a dispersion grade polyvinyl chloride ring produced and labeled as either ASTM C-443, C-425, or C-564, or a elastomeric polyvinyl chloride coupling.

Section 4. Caulked Joints. Caulk joints shall be firmly packed with oakum or hemp and shall have at least one (1) inch of pure lead properly caulked. Paint, varnish or putty shall not be permitted until tests have been performed.

Section 5. (1) Screw joints. Screw joints shall be American Standard screw joints and all burrs or cuttings shall be removed as required by 815 KAR 20:150.

(2) Mechanical joint couplings for hot and cold water. Mechanical joint couplings for hot and cold water shall not be used above ground unless the couplings are galvanized and the gaskets produced and labeled as ASTM D2000, grade N-R-615 BZ, or other material listed in approved parts or materials list, 815 KAR 20:020.

(3) Mechanical joint couplings for storm water piping. Mechanical joint couplings for storm water piping shall not be used above ground unless the couplings are either black iron or galvanized and the gaskets produced and labeled as ASTM D2000, grade N-R-615 BZ.

(4) Joints in PVC and ABS Schedule 40 or 80 pipe and fittings.

(a) Joints in polyvinyl chloride schedule 40 or 80 pipe and fittings shall be solvent welded joints and shall be in compliance with ASTM D2665.

(b) Joints in acrylonitrile-butadiene-styrene pipe and fittings shall be solvent welded joints and shall be in compliance with ASTM D2661.

(c) Acrylonitrile-butadiene-styrene and polyvinyl chloride sewer piping produced and labeled as ASTM 3034 shall be joined by solvent cement produced and labeled as ASTM D-2661-90 for acrylonitrile-butadiene-styrene and ASTM D2665 for polyvinyl chloride or with an elastomeric joint in compliance with ASTM D3212.

(5) Copper pipe, brass, and stainless steel tubing joints.

(a) Joints of copper pipe, brass and stainless steel tubing shall be soldered.

(b) Mechanical couplings.

1. Types K and L copper tubing systems from two (2) inch through six (6) inch and used for water distribution shall be installed using mechanical pipe couplings of a bolted type with a flush seal gasket along with grooved end copper fittings.

2. Couplings shall be of the angle pad design to obtain rigidity.

(6) Expansion. An expansion joint shall be of an approved type and the material shall comply with the type of piping in which it is installed.

(7) Brazed joints. Brazed joints shall be made by cleaning the surfaces to be joined down to the base metal, applying flux approved for the joints and for the filler metal to be used, and making the joint by heating to a temperature sufficient to melt the approved brazing filler metal on contact.

(8) Elastomeric polyvinyl chloride coupling. Elastomeric polyvinyl chloride couplings shall be used for connecting cast iron, vitrified clay, concrete, or plastic pipe or the combination of these pipe materials for use on house sewers and combination sewers only. This coupling shall be provided with #305 stainless steel clamps.

Section 6. Cast Iron Soil Pipe Joints. (1) Joints in cast iron shall either be caulked, screwed, or made with the use of neoprene gaskets. Neoprene gaskets shall be produced and labeled as ASTM C-564-70.

(2) Cast iron coupling for joining hubless cast iron pipe shall consist of neoprene gasket produced and labeled as ASTM C-564, cast iron clamps produced and labeled as ASTM A-48 and stainless steel bolts and nuts produced and labeled as ANSI B-18.2.1 and ANSI B-18.2.2.

Section 7. Borosilicate Joints. Joints and gaskets used for borosilicate pipe shall be made in a manner approved by the department[~~office~~] as established in 815 KAR 20:060.

Section 8. (1) Steel, brass and copper connections to cast iron pipe. Steel, brass and copper joints connected to cast iron pipe shall be either screwed or caulked joints. Caulked joints shall be made by the use of a caulking spigot.

(2) PVC and ABS pipe and fitting connections to steel, brass, copper and cast iron pipe.

(a) Polyvinyl chloride and acrylonitrile-butadiene-styrene pipe and fitting connections to steel, brass, copper or cast iron pipe shall be either a screwed or caulked joint.

(b) Joints between Schedule 40 PVC or ABS pipe and cast iron pipe may be made by the use of a neoprene gasket produced and labeled as ASTM C-564-70.

(c) Caulk joints shall be made with the use of either a polyvinyl chloride or acrylonitrile-butadiene-styrene or cast iron caulking spigot.

(3) Stainless steel tubing to cast iron pipe or galvanized steel pipe or to copper tubing.

(a) Stainless steel tubing to cast iron pipe shall be made by caulking spigot.

(b) Stainless steel tubing to galvanized steel pipe or copper pipe shall be made by the use of an adaptor.

(4) Joints in acid waste piping.

(a) Joints in vitreous glazed piping shall be made in compliance with manufacturer's recommendations.

(b) Joints in polyethylene and polypropylene piping shall be made by the heat fusion process.

(c) Joints in polypropylene shall be made with a union joint.

(d) Joints in borosilicate pipe shall be a stainless steel mechanical joint.

(e) Joints between silicon iron pipe shall be either caulk joint or stainless steel mechanical joint.

Section 9. Lead Pipe. (1) Joints in lead pipe or between lead pipe and brass or copper pipes, ferrules, soldering nipples, or trap, shall be full-wiped joints with an exposed surface of the solder at each side of the joint of not less than three-quarters (3/4) of an inch.

(2) The minimum thickness of the thickest part of the joint shall be at least as thick as the material being used.

(3) If lead pipe is used for acid waste lines, the pipe may be

joined by burning.

Section 10. Lead Pipe to Cast Iron, Steel, or Wrought Iron Pipe. The joints between lead to cast iron, steel or wrought iron shall be made by means of a caulking ferrule or a soldering nipple.

Section 11. Wall or Floor Flange Joints. Wall or floor flange joints shall be made by using a lead ring or brass flange and shall be properly soldered.

Section 12. Soil Pipe, Iron Pipe, Copper Pipe; Tubular Trap Joints. Joints between soil pipe, iron pipe, copper pipe and tubular traps shall be made by the use of a heavy red cast brass adaptor. Tubular traps shall be soldered to the adaptor in compliance with manufacturer's recommendations.

Section 13. Slip Joints. (1) Slip joints shall be permitted[~~only~~] on the inlet side of a trap.

(2) Slip joints with one (1) elastomeric gasket connection including an internal stop shall be permitted on the outlet side of the trap if the installation is within either a one- or two-family dwelling. Outlet side slip joints shall not be:

(a) Installed on a kitchen sink;

(b) Installed on a laundry tray;

(c) Installed with less than a one (1) inch protrusion through the finished wall; or

(d) Installed with a cross-type fitting unless:

1. The trap arm extends no less than twelve (12) inches between cross-type fitting and trap adapter; or

2. A 45 degree or greater fitting is between the cross-type fitting and the trap adapter.

Section 14. Unions. Unions shall be ground faced and shall not be concealed or enclosed.

Section 15. Roof Joints. (1) The joint at the roof shall be made watertight by use of copper, lead or other approved flashing or flashing material.

(2)(a) Except as provided in paragraph (b) of this subsection, the approved flashing shall:

1. Not extend less than six (6) inches from the pipe in all directions; and

2. Extend upward twelve (12) or more inches and turn down into the pipe.

(b) Lead flashings for three (3) inch and four (4) inch vent stacks shall have a minimum twelve (12) inch base.

(3) A hub flashing may be used if it is constructed in a manner allowing the flashing to be caulked into a hub above the roof.

Section 16. Increasers and Reducers. If different size pipes or fittings are to be concealed, the proper size increaser or reducer pitched at an angle of forty-five (45) degrees between the two (2) sizes, shall be used. This section shall not apply to nonmetallic installations.

Section 17. Prohibited Joints and Connections. A fitting or connection which has an enlargement chamber, or recess with a ledge shoulder, or reduction of the pipe area in the direction of the flow shall be prohibited.

Section 18. Hangers and Supports. Piping and fixtures shall be adequately supported by hangers or anchors securely attached to the building construction.

AMBROSE WILSON IV, Commissioner
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: May 15, 2012

FILED WITH LRC: May 15, 2012 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 21, 2012, at 9:00 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 June 14, 2012 (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 2, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394, ext. 144, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dawn M. Bellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the methods that shall be used in joining certain types of piping materials together and denotes the methods that shall be used in securing plumbing fixtures to waste piping outlets.

(b) The necessity of this administrative regulation: This amendment is necessary in order to improve the service access to the drain waste and vent system and will allow more connection options.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.130 authorizes the department to adopt reasonable rules or regulations, after review by the State Plumbing Code Committee, for the administration of the plumbing program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will allow more connection options and better service access to the drain waste and vent system.

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

(a) How the amendment will change this existing administrative regulation: Allows more connection options and better service access to the drain waste and vent system.

(b) The necessity of the amendment to this administrative regulation: Provides more options and better access to the drain waste and vent system.

(c) How the amendment conforms to the content of the authorizing statutes: Updates the regulation to allow more options and better access to the drain waste and vent system.

(d) How the amendment will assist in the effective administration of the statutes: Will assist those individuals in the plumbing industry by allow more connection options and better service access to the drain waste and vent systems.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This administrative regulation will affect the Department of Housing, Buildings and Construction, the Division of Plumbing, the State Plumbing Code Committee, plumbers, owners of one- and two-family dwellings.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Plumbing inspectors and plumbers will have better access to the drain waste and vent system and will be able to utilize more connection options.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no anticipated additional cost associated with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits anticipated from this regulation will be more connection options and better access to the

drain waste and vent systems by both plumbers and inspectors.

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

(a) Initially: No cost to implement.

(b) On a continuing basis: No cost to implement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Restricted funds which are appropriated for the administration of the Division of Plumbing.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no need for an increase in fees nor funding to accommodate the amendments included. To the extent that plumbing inspections are mandatory statewide, the funding for inspections of the additional connection options create no additional fiscal impact to the Division of Plumbing.

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

(9) TIERING: Is tiering applied? Tiering is not applicable to this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Plumbing, and the State Plumbing Code Committee will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 318.130.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation establishes no revenues nor creates expenditures.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year. To the extent that plumbing inspections are mandatory statewide, the amendments to this regulation creates= no revenue specific fiscal impact to the Division of Plumbing. Inspections of the additional connection options are included in current inspection fees established.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years. To the extent that plumbing inspections are mandatory statewide, the amendments to this regulation create no revenue specific fiscal impact to the Division of Plumbing. Inspections of the additional connection options are included in current inspection fees established.

(c) How much will it cost to administer this program for the first year? There are no additional or new costs to administer this program due to the regulation amendments.

(d) How much will it cost to administer this program for subsequent years? There are no additional costs anticipated to administer this program for subsequent years as a result of the regulatory amendments recommended by the State Plumbing Code Committee.

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: There is no anticipated fiscal impact from this administrative regulation to state or local government.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy
(Amendment)

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", "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) 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 outpa-

tient 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 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 they provide and shall, for every record, copy and provide to the cabinet the data specified in Section 14 of this 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 uniformly 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.

(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 determining 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 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 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 30, 2012[~~October 31, 2011~~]; and

(b) "Kentucky Data Coordinator's Manual for Ambulatory Facilities," revised April 30, 2012[~~October 31, 2011~~].

(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.

CARRIE BANAHAN, Executive Director
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: May 14, 2012

FILED WITH LRC: May 15, 2012, at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on June 21, 2012, 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 June 14, 2012, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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 July 2, 2012 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(s): Carrie Banahan or Chandra Venettozzi

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides clarification and instruction to specified health care providers on the process necessary to submit copies of administrative claims data to the cabinet.

(b) The necessity of this administrative regulation: This administrative regulation is necessary so that health care providers have a uniform mechanism with timeframes and instructions with which to submit the required data. The administrative regulation contains the updated data submission manuals for both hospitals and ambulatory facilities. Revisions to the manuals were necessary due to 1) the addition of one new payor code to identify pending insurance, 2) addition of the requirement to report newly created CPT/HCPCS codes, 3) clarification that ED record counts are now determined solely by CPT code, 4) changes required by CMS related to loop, segment, and/or qualifier in the 837-5010 file format, and 5) deletion of edits that are no longer required in the 5010 file format.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is necessary so that health care providers have a uniform mechanism with

timeframes and instructions with which to submit the required data to enable the cabinet to publish the data as required by KRS 216.2925.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides detailed instructions to specified health care providers relating to the data elements, forms and timetables necessary to comply with statute.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation incorporates by reference updated data reporting manuals. Revisions to the manual were necessary due to 1) the addition of one new payor code to identify pending insurance, 2) addition of the requirement to report newly created CPT/HCPCS codes, 3) clarification that ED record counts are now determined solely by CPT code, 4) changes required by CMS related to loop, segment, and/or qualifier in the 837-5010 file format, and 5) deletion of edits that are no longer required in the 5010 file format.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide new data submission manuals to facilities that submit data so that accuracy of the data is ensured.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment continues to conform to the content of the authorizing statutes by providing a standardized method of reporting by facilities.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes as it provides detailed instructions on how to submit required data elements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect approximately 185 hospitals and ambulatory facilities that submit data to the Cabinet.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each entity will collect and submit data as required. Entities are already required to submit data, this regulation incorporated by reference manuals that were revised due to 1) the addition of one new payor code to identify pending insurance, 2) addition of the requirement to report newly created CPT/HCPCS codes, 3) clarification that ED record counts are now determined solely by CPT code, 4) changes required by CMS related to loop, segment, and/or qualifier in the 837-5010 file format, and 5) deletion of edits that are no longer required in the 5010 file format..

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Each entity will collect and submit data as required. Entities are already required to submit data, this regulation incorporated by reference manuals that were revised to provide detailed submission requirements. Therefore, no additional cost will be incurred.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Data integrity is improved as all applicable payor codes are now included it the manuals and instructions have been provided related to CMS requirement to upgrade from 837-4010 file layout to 837-5010 file layout.

(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 administrative regulation as the office of Health Policy currently collects data and has the necessary data collection system in place.

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

(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. No new funding will be needed to implement the provisions 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 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 administrative regulation does not establish any fees directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects the Office of Health Policy within the Cabinet for Health and Family Services and the state operated hospital facilities.

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? This administrative regulation will not generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue.

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

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation on a continuing basis.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Sales and Excise Taxes
(New Administrative Regulation)

103 KAR 31:170. Disaster Area Relief Sales and Use Tax Refunds.

RELATES TO: 139.720, 139.770

STATUTORY AUTHORITY: KRS 131.130(1), 139.710, 2012 Ky. Acts ch. 145, sec. 1(7)(a)

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. KRS 139.710 authorizes the department to administer the provisions of KRS Chapter 139, relating to the assessment, collection, refund, and administration of sales and use taxes. 2012 Ky. Acts ch. 145 establishes the tax refund provisions for sales and use tax paid on building materials purchased for the purpose of repairing or replacing a building damaged or destroyed by a disaster within a disaster area.

Section 1. Definitions. (1) "Building materials" is defined in 2012 Ky. Acts ch. 145, sec. 1(1)(a).

(2) "Disaster" is defined in 2012 Ky. Acts ch. 145, sec. 1(1)(b).

(3) "Disaster area" is defined in 2012 Ky. Acts ch. 145, sec. 1(1)(c).

(4) "Qualifying construction" means:

(a) Construction that repairs the portion of a building damaged by a disaster in a disaster area; or

(b) Construction that replaces a building damaged by a disaster in a disaster area.

Section 2. Refund Application Requirements. (1) Requests for refunds shall be filed with the Department of Revenue after completion of the "qualifying construction" and within three (3) years from the date the disaster area is declared.

(2) Refund requests shall be postmarked, electronically submitted, or if delivered by messenger, hand-stamped by the department by the date required in subsection (1) of this section to qualify for consideration and shall include the following completed information:

(a) Application for Kentucky Disaster Relief Refund, Form 51A600;

(b) Information Sharing and Assignment Agreement for Disaster Relief Refund Claims, Form 51A601;

(c) Expenditure Report for Building Materials Disaster Relief Refunds, Form 51A602;

(d) Copies of contractor invoices to the legal building owner, if applicable;

(e) Related sample sales receipts of "building materials" purchased from each vendor;

(f) Photographs of disaster damage and related construction;

(g) Other applicable documents supporting the refund claim; and

(h) One of the following types of documentation:

1. Confirmation letter that the legal building owner is eligible for assistance from the Federal Emergency Management Agency (FEMA), United States Department of Homeland Security because of property damage from the disaster; or

2. A copy of the insurance claim filed for the building damage sustained in the disaster.

(3) Any request for a refund filed with the Department after the three (3) year period referred to in subsection (1) of this section shall be denied.

Section 3. Record Keeping Requirements. The legal owner and other applicable parties shall keep adequate and complete records supporting the refund request for periods not less than four (4) years as provided for in KRS 139.720. The department may audit the records of all parties involved as necessary to verify the refund request and to ensure compliance.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Kentucky Disaster Relief Sales and Use Tax Refund", Form 51A600, April 2012;

(b) "Information Sharing and Assignment Agreement for Disaster Relief Refund Claims", Form 51A601, April 2012; and

(c) "Expenditure Report for Building Materials Disaster Relief Refunds", Form 51A602, April 2012.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Revenue, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. until 5 p.m.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: May 11, 2012

FILED WITH LRC: May 11, 2012 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 27th, 2012, 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 July 2nd, 2012. 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 and Legislative Liaison, Office of General Counsel, Office of the Secretary, Finance and Administration Cabinet, 392 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-6660, fax (502) 564-9875.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation clarifies the procedure for obtaining a refund of sales and use taxes paid on qualifying purchases made for the purpose of rebuilding or replacement construction in a federally declared disaster area in Kentucky.

(b) The necessity of this administrative regulation: It provides guidance to those individuals who qualify for such relief to assist in the process of obtaining the appropriate refund.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(1) and 2012 Kentucky Acts Chapter 145 Section 7(a) authorizes the department to promulgate administrative regulations and prescribe forms necessary to implement and administer Kentucky's tax laws.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides clarification for affected taxpayers to properly assess and report relevant damage and properly apply for the appropriate sales and use tax refund.

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

(a) How the amendment will change this existing administrative regulation: Not Applicable

(b) The necessity of the amendment to this administrative regulation: Not Applicable

(c) How the amendment conforms to the content of the authorizing statutes: Not Applicable

(d) How the amendment will assist in the effective administra-

tion of the statutes: Not Applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect legal building owners with damaged or destroyed structures throughout the 23-county federal disaster area declared in the wake of storms and tornados that swept across the Commonwealth Wednesday, February 29, 2012, through Saturday, March 3, 2012. According to available reports, the storms destroyed 650 homes and damaged another 1,550. In addition, numerous businesses were also damaged or destroyed. Prospectively, this regulation will also relate to those impacted by future disaster areas.

(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 provides guidance on how building owners with damage or loss may obtain refunds of sales and use tax paid on building materials used to repair or replace damaged or destroyed buildings by timely filing refund applications and submitting appropriate documentation whereby the Department may identify the original tax paid and facilitate a refund back to the building owner.

(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 only minimal cost to complete the refund application, expenditure reports from contractors and vendors, information sharing agreements from related parties and other documentation already provided to building owners by insurance carriers or the Federal Emergency Management Agency.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with the regulation will ensure the appropriate and expeditious processing of the sales and use tax refund claims related to the disaster relief.

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

(a) Initially: Minimal costs should be incurred to create and disseminate the necessary educational materials and are to be covered by the general administrative expenses of the Department.

(b) On a continuing basis: The Department of Revenue will not incur additional costs to monitor this regulation. Any additional actions will be absorbed within existing budget provisions.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied because the requirements of this regulation apply equally to all taxpayers in the qualifying areas.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(1), KRS 139.710, and 2012 Kentucky Acts Chapter 145, sec. 1(7)(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. The Department of Revenue will incur minimal additional costs to develop and disseminate educational materials to affected taxpayers. No additional expenditures are anticipated for any agency.

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue.

(c) How much will it cost to administer this program for the first year? The additional cost should be minimal and will be absorbed in the normal operating cost of the Department.

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

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

Revenues: (+/)

Expenditures (+/-)

Other Explanation:

GENERAL GOVERNMENT CABINET
Department of Military Affairs
Division of Administrative Services
(New Administrative Regulation)

106 KAR 2:030. National Guard adoption benefit program.

RELATES TO: 2012 Ky. Acts ch. 7, secs 1, 2, KRS 199.555(1)

STATUTORY AUTHORITY: 2012 Ky. Acts ch. 7, sec. 1(8)

NECESSITY, FUNCTION AND CONFORMITY: 2012 Ky. Acts ch. 7, sec. 1(8) requires the Department of Military Affairs to promulgate administrative regulations to implement the Kentucky National Guard Adoption Assistance Program. This administrative regulation establishes the requirements for the Kentucky National Guard employee adoption assistance program.

Section 1. Kentucky National Guard Adoption Benefit Program Application Procedures. (1) An eligible member of the Kentucky National Guard applying for funds under 2012 Ky. Acts ch. 7, sec. 1, shall submit a completed Kentucky National Guard Adoption Benefit Program Application.

(2) The application shall be submitted to the Department of Military Affairs, along with:

(a) The documentary evidence required by 2012 Ky. Acts ch. 7, sec. 1(5);

(b) A copy of the Affidavit of Expenses related to the adoption filed with and approved by the court at the finalization of the adoption; and

(c) The Adoption Reimbursement Request Letter.

Section 2. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Kentucky National Guard Adoption Benefit Program Application", July 2012;

(b) "Affidavit of Expenses", July 2012; and

(c) "Adoption Reimbursement Request Letter", July 2012.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Military Affairs, 100 Minutemen Parkway, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

STEVEN P. BULLARD, Director

APPROVED BY AGENCY: May 14, 2012

FILED WITH LRC: May 14, 2012 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD A public hearing on this administrative regulation shall be held on June 21, 2012 at 2:00 p.m. at 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601-6168 at the Emergency

Operations Center in Room 202. 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 July 2, 2012. 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: Mr. Steven P. Bullard, Director of Administrative Services, Office of Management and Administration, Department of Military Affairs, phone (502) 607-1738, fax (502) 607-1240.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Steven P. Bullard

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the Kentucky National Guard employee adoption assistance program, specifically application procedures and required documentation.

(b) The necessity of this administrative regulation: This regulation is critical to provide guidance in the execution of this program pursuant to the basic law.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes the application procedure and application form, Affidavit of Expenses and the Adoption Reimbursement Request Letter necessary to receive assistance under the Kentucky National Guard Adoption Benefit Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the Military Family Assistance Trust Fund Board (which will provide the financial resources for the Kentucky National Guard Adoption Benefit Program) and the Adjutant General in the execution of this program for approving applications, as well as providing guidance on reporting 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: This regulation is written to provide guidance in assisting actively serving members of the Kentucky National Guard with costs associated with the adoption process.

(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 required of any entity.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost for any entity.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation will allow for the establishment of guidance on how to execute this trust fund in assisting the Kentucky National Guard member in obtaining funding to assist in the adoption process.

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

(a) Initially: The Kentucky National Guard Adoption Assistance Program will utilize funding available in the Kentucky Military Family Assistance Trust Fund, operated under the Kentucky Department of Military Affairs, which was initially funded $500,000 per HB 380 2006RS (Ky. Acts 252), and retains a current balance of approximately $490,000, to establish and provide grants to applicants.

(b) On a continuing basis: Funding is anticipated to be allocated to the Military Family Assistance Trust Fund on an as-need basis by the Kentucky General Assembly. To this point, no additional funding has been required since inception of the fund in CY2006.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of this trust fund is general fund dollars as well as any grants, contributions, appropriations, or other moneys made available for the purpose of the trust fund either public or private.

(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 anticipated increase of Military Family Assistance Trust Fund money is minimal, approximately $30,000 annually based on the historic percentage of use of the state adoption benefit program for state employees; however, this is a new program being established with no historical record of requirements. Based on current and anticipated usage of the fund, it will be another 10-to-12 years before more funding is required.

(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 relate to fees.

(9) TIERING: Is tiering applied? Tiering was not used. The regulation will not reduce or modify substantive regulatory requirements, eliminate some requirements entirely, simplify and reduce reporting and recordkeeping requirements, reduce the frequency of inspections, provide exemptions from inspections and other compliance activities, or delay compliance timetables.

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 Military Affairs, Division of Administrative Services.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 2012 Ky. Acts ch. 7, secs 1, 2, KRS 199.555(1)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. 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? Funding is already available for the Kentucky National Guard Adoption Benefit Program through the Kentucky Military Family Assistance Trust Fund, through which the program will be administered. HB 380 2006RS (Ky. Acts 252) earmarked $100,000 of the $500,000 total program funding specifically for the administration of this program. The remaining $400,000 is for programmatic grants to eligible applicants.

(d) How much will it cost to administer this program for subsequent years? The anticipated increase of Military Family Assistance Trust Fund money is minimal, approximately $30,000 annually based on the historic percentage of use of the state adoption benefit program for state employees; however, this is a new pro-

gram being established with no historical record of requirements. Based on current and anticipated usage of the fund, it will be another 10-to-12 years before more funding is required.

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

Revenues (+/-): This definitional administrative regulation has no fiscal impact.

Expenditures (+/-): This definitional administrative regulation has no fiscal impact.

Other Explanation: This definitional administrative regulation has no fiscal impact.

TOURISM, ARTS AND HERITAGE CABINET
Department of Parks
(New Administrative Regulation)

304 KAR 1:080. Kentucky Proud™ Promotion Program.

RELATES TO: KRS 45A.645, 260.016

STATUTORY AUTHORITY: KRS 148.830 to 148.840

NECESSITY, FUNCTION, AND CONFORMITY: KRS 148.830 requires the Commissioner of Parks to promulgate administrative regulations relating to the promotion of Kentucky-grown agricultural products to operate in conjunction with the Kentucky Proud™ Program. This administrative regulation establishes guidelines for the promotion program.

Section 1. The Kentucky Department of Parks, in cooperation with the Kentucky Department of Agriculture, shall promote and identify Kentucky grown and Kentucky Proud™ Products in its state resort park restaurants, gift shops, concessions, and golf courses.

Section 2. The Department of Parks' promotion program shall:

(1) Encourage the Department of Parks to utilize local vendors, when feasible and cost effective;

(2) Include the Kentucky Proud™ logo on all park dining menus when those products are utilized;

(3) Include the Kentucky Proud™ logo on park uniforms when feasible and applicable;

(4) Promote special events that feature Kentucky Proud™ products;

(5) Identify Kentucky produced products in park gift shops;

(6) Encourage contract vendors to offer Kentucky Proud™ products; and

(7) Promote the program through its press releases, social media, and Web site.

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: May 15, 2012

FILED WITH LRC: May 15, 2012 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD A public hearing on this administrative regulation shall be held on Tuesday, June 26, 2012 at 2:00 p.m. at the Tourism, Arts and Heritage Cabinet, 500 Mero Street, Capital Plaza Tower, 24th Floor, 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 to 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 2, 2012. 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: Leigh Powers, Legal Counsel, Tourism, Arts and Heritage Cabinet, 500 Mero Street, 24th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4270.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person(s): B. Leigh Powers, Mona Juett

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes guidelines for promotion of Kentucky-grown agricultural products to operate in conjunction with the Kentucky Proud™ Program.

(b) The necessity of this administrative regulation: KRS 148.830 requires the Department of Parks to establish a promotion program within the Department of Parks to promote the sale of Kentucky-grown agricultural products in state resort park restaurants, gift shops, concessions and golf courses. The statute also requires the Commissioner of the Department of Parks to promulgate administrative regulations to implement the promotion program. KRS 148.835 requires the Department of Parks to establish a promotion program within the Department of Parks to require that if purchasing agricultural products, state parks purchase Kentucky-grown agricultural products if the purchasing officer determines that they are available, can be priced on the menu to encourage their sale, and meet the quality standards set by the Department of Parks.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 148.021 authorizes the Commissioner of the Department of Parks to promulgate administrative regulations reasonably necessary to implement or carry out the purposes of KRS Chapter 148. KRS 148.830 requires the Department of Parks to establish a promotion program within the Department of Parks to promote the sale of Kentucky-grown agricultural products in state resort park restaurants, gift shops, concessions and golf courses. KRS 148.835 requires the Department of Parks to establish a promotion program within the Department of Parks to require that if purchasing agricultural products, state parks purchase Kentucky-grown agricultural products if the purchasing officer determines that they are available, can be priced on the menu to encourage their sale, and meet the quality standards set by the Department of Parks.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes guidelines for the promotion 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: Not applicable, this is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: The Department of Parks will be affected by this administrative regulation and the public will become more informed about the Department of Parks efforts to utilize Kentucky-grown and Kentucky Proud™ Products in its state resort park restaurants, gift shops, concessions and golf courses.

(4) Provide an assessment of how the above group or groups will be impacted by either implementation of this administrative regulation, if new, or by the change, if it is an amendment: Guests visiting Kentucky State Parks will become more aware of the Department of Parks efforts to promote Kentucky-grown and Kentucky Proud™ Products. The Kentucky Department of Parks may be required to expend additional staff resources and funds to implement the promotion program, but may also realize additional revenues from the program's initiatives.

(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: The estimate of implementation costs for the promotion program depends of the goals of the program and the available funding from the Department of Parks.

(b) On a continuing basis: The estimate of implementation costs for the promotion program depends of the goals of the program and the available funding from the Department of Parks.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Fees are not 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 directly or indirectly establish or increase any fee.

(9) TIERING: Is tiering applied? Tiering was not applied to this administrative regulation. All individuals who visit Kentucky State Parks will encounter the promotion program equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Parks 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 148.830 mandates that the Commissioner of the Department of Parks shall promulgate administrative regulations to implement a promotion program for the sale of Kentucky-grown agricultural products in state resort park restaurants, gift shops, concessions and golf courses.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect: Expenditures for the Kentucky Department of Parks May change. The Department of Parks Food Service division is already marketing use of Kentucky-grown agricultural products and Kentucky Proud™ products throughout the state park system. However, additional staff time will likely be required to coordinate the new program. Revenues may increase if the promotion program leads to greater sales of Kentucky-grown agricultural products and Kentucky Proud™ products.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Revenues may increase if the promotion program leads to greater sales of Kentucky-grown agricultural products and Kentucky Proud™ products. The specific amount of revenue is not known.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Again, Revenues may increase if the promotion program leads to greater sales of Kentucky-grown agricultural products and Kentucky Proud™ products. The specific amount of revenue is not known.

(c) How much will it cost to administer this program for the first year? The program will likely incur costs as additional staff time will be required to coordinate any new program initiatives that may arise through the program.

(d) How much will it cost to administer this program for subsequent years? Unknown, depending on the scope of the project in future years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Permits
(New Administrative Regulation)

405 KAR 10:015. General bonding provisions.

RELATES TO: KRS 350.020, 350.060, 350.062, 350.064, 350.093, 350.095, 350.100, 350.110, 350.151, 350.465

STATUTORY AUTHORITY: KRS 350.060, 350.062, 350.064, 350.093, 350.095, 350.100, 350.110, 350.151, 350.465

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 authorizes the cabinet to promulgate administrative regulations to establish procedures for determining amounts for performance bonds for surface coal mining operations. This administrative regulation specifies criteria for the base determination of bond amounts and requires certain periods of liability during which the bonds must remain in effect. This administrative regulation establishes requirements for filing and maintaining performance bonds, and provides for adjustments in bond amounts and additional information related to minimum bonds and application of bonds to ensure performance of the requirements of KRS Chapter 350 in the event work must be performed by the cabinet, taking into consideration such things as topography, geology, future land use and the difficulty of reclamation.

Section 1. Bonding Requirements. (1) An applicant shall not disturb surface acreage or extend any underground shafts, tunnels, or operations prior to receipt of approval from the cabinet of a performance bond covering areas to be affected by surface operations and facilities.

(2) After an application for a new, amended, revised or renewed permit to conduct surface coal mining and reclamation operations has been approved under 405 KAR Chapter 8, but before the permit is issued, the applicant shall file with the cabinet, on a form prescribed and furnished by the cabinet, a performance bond payable to the cabinet. The applicant shall file the Performance Bond, Form SME-42, June 1999, for operations on lands other than federal lands, or the Performance Bond for Surface Coal Mining and Reclamation on Federal Lands, Form SME-42-F, June 1999, for operations on federal lands. The performance bond shall be conditioned upon the faithful performance of all the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the provisions of the reclamation plan and permit, and shall cover all surface coal mining and reclamation operations to be conducted within the permit area or increment thereof until all reclamation requirements of 405 KAR Chapters 7 through 24 have been met. The amount, duration, type, conditions and terms of the performance bond shall conform to the requirements of this administrative regulation.

(3) No permit shall be revised or amended to include additional area unless the liability of the current bond is extended to cover the entire permit area or increment as revised or amended, and the liability of the supplemental bond covers the entire permit area as revised or amended. Unless these conditions are met with respect to the bond, the additional area shall be permitted as a separate increment of the current permit area or under a new permit.

(4) A rider to the applicable performance bond, confirming coverage of the revision, shall be submitted by the applicant if a revision to a permit does not change the acreage of the permit area or increment but:

(a) Adds a coal washer, a crush and load facility, a refuse pile, or a coal mine waste impoundment to the existing permit; or

(b) Alters the boundary of a permit area or increment.

Section 2. Terms and Conditions of Performance Bond. (1) The performance bond shall be in an amount determined by the cabinet as provided in Sections 6, 7, and 8 of this administrative regulation.

(2) The performance bond shall be payable to the cabinet.

(3) The performance bond shall be conditioned upon faithful performance of all of the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24 and the conditions of the permit and shall cover the entire permit area or such incremental area as the cabinet has approved pursuant to Section 4(2) of this administrative regulation.

(4) The duration of the bond shall be for a time period provided in Section 9 of this administrative regulation.

(5) Surety bonds shall be subject to the following conditions:

(a) The cabinet shall not accept the bond of a surety company unless the bond shall not be cancelable by the surety at any time for any reason including, but not limited to, nonpayment of premium or bankruptcy of the permittee during the period of liability. Surety bond coverage for permitted lands not disturbed may be cancelled with the written approval of the cabinet, provided the surety gives written notice to both the permittee and the cabinet of the intent to cancel prior to the proposed cancellation. Such notice shall be by certified mail. Cancellation shall not be effective for lands subject to bond coverage which are affected after receipt of notice, but prior to approval by the cabinet. The cabinet may approve such cancellation only if a replacement bond has been filed by the permittee, or if the permit area has been reduced by revision to the extent that the remaining bond amount, after cancellation, is sufficient to cover all the costs attributable to the completion of reclamation operations on the reduced permit area in accordance with Section 10 of this administrative regulation. The cabinet shall advise the surety, within thirty (30) days after receipt of a notice to cancel bond, whether the bond may be cancelled on an undisturbed area.

(b) The bond shall provide that the surety and the permittee shall be jointly and severally liable.

(c)1. The surety shall give prompt notice to the permittee and the cabinet of any notice received or action filed alleging the insolvency or bankruptcy of the surety, or alleging any violations of regulatory requirements which could result in suspension or revocation of the surety's license to do business.

2. In the event the surety becomes unable to fulfill its obligations under the bond for any reason the surety shall promptly provide written notice to the permittee and the cabinet.

3. Upon the incapacity of a surety by reason of bankruptcy, insolvency, or suspension or revocation of its license or certificate of authority, the permittee shall be deemed to be without proper bond coverage and shall promptly notify the cabinet. However, nothing herein shall relieve the permittee of responsibility under the permit or the surety of liability on its bond. The cabinet shall issue a notice to the permittee specifying a reasonable period to replace bond coverage, not to exceed ninety (90) days. If an adequate bond is not posted by the end of the period allowed, the permittee shall cease coal extraction and coal processing operations and shall comply with the provisions of 405 KAR 16:010, Section 6, or 405 KAR 18:010, Section 4, and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan. Coal extraction and coal processing operations shall not resume until the cabinet has determined that an acceptable bond has been posted. If an acceptable bond has not been posted by the end of the period allowed, the cabinet may suspend the permit until acceptable bond is posted.

(d) A surety bond shall be executed by the operator and a corporate surety licensed to do business in the Commonwealth of Kentucky.

(6) Collateral bonds may include cash deposits with the cabinet, certificates of deposit, and letters of credit. Collateral bonds, except for letters of credit, shall be subject to the following conditions:

(a) The cabinet or its authorized agent shall obtain possession of and keep in custody all collateral deposited by the applicant, until authorized for release or replacement as provided in this chapter.

(b) The cabinet shall require that certificates of deposit be assigned to the cabinet or its authorized agent in writing, through the submittal of Escrow Agreement Form SME-64, July 2000, and the assignment evidenced on the books of the bank issuing such certificates.

(c) The cabinet shall not accept an individual certificate of deposit unless it is issued by a FDIC or FSLIC insured financial institution, and in no event shall the cabinet accept a denomination in excess of the maximum insurable amount as determined by FDIC and FSLIC.

(d) The cabinet shall require the issuer of certificates of deposit to waive all rights of setoff or liens which it has or might have against those certificates.

(e) Persons with an interest in collateral posted as a bond, and who desire notification of actions pursuant to the bond, shall request the notification in writing to the cabinet at the time the collateral is offered.

(f) The cabinet shall require the applicant to deposit sufficient amounts of certificates of deposit, so as to assure that the cabinet will be able to liquidate those certificates prior to maturity, upon forfeiture, for the amount of the bond required by this chapter.

(7) Letters of credit shall be subject to the following conditions:

(a) The letter may only be issued by a bank organized or authorized to do business in the United States. Any letter of credit issued by a non-Kentucky lending institution must be confirmed by an approved Kentucky lending institution.

(b) Letters of credit shall be irrevocable.

(c) The letter must be payable to the cabinet upon demand and receipt from the cabinet of a notice of forfeiture issued in accordance with 405 KAR 10:050, or in the event the bank wishes to terminate the letter on its expiration date, the cabinet may draw upon demand. The Irrevocable Standby Letter of Credit, Form SME-72 July 1994, and the Confirmation of Irrevocable Letter of Credit, For SME-72-A, July 1994, shall be submitted to the cabinet, as necessary.

(d)1. The issuer shall give prompt notice to the permittee and the cabinet of any notice received or action filed alleging the insolvency or bankruptcy of the issuer, or alleging any violations of regulatory requirements which could result in suspension or revocation of the issuer's charter or license to do business;

2. In the event the issuer becomes unable to fulfill its obligations under the letter of credit for any reason, notice shall be given immediately to the permittee and the cabinet;

3. Upon the incapacity of an issuer by reason of bankruptcy, insolvency or suspension or revocation of its charter or license, the permittee shall be deemed to be without proper performance bond coverage and shall promptly notify the cabinet. However, nothing herein shall relieve the permittee of responsibility under the permit or the issuer of liability on the letter of credit. The cabinet shall issue a notice to the permittee specifying a reasonable period to replace bond coverage, not to exceed ninety (90) days. If an adequate bond is not posted by the end of the period allowed, the permittee shall cease coal extraction and coal processing operations and shall comply with the provisions of 405 KAR 16:010, Section 6, or 405 KAR 18:010, Section 4, and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan. Coal extraction and coal processing operations shall not resume until the cabinet has determined that an acceptable bond has been posted. If an acceptable bond has not been posted by the end of the period allowed, the cabinet may suspend the permit until acceptable bond is posted.

(8) When a permittee chooses to combine two (2) or more bonds for one (1) permit area or increment, the bonds may be accompanied by a schedule, acceptable to the cabinet and agreed to by all parties, which sets forth the agreed distribution of bond amounts to be released or reduced under 405 KAR 10:040 and Section 10 of this administrative regulation, respectively. If no schedule is submitted, the cabinet may release equal percentages of each bond.

Section 3. Types of Performance Bond. (1) The cabinet shall approve performance bonds of only those types which are set forth in this section.

(2) The performance bond shall be either:

(a) A surety bond;

(b) A collateral bond;

(c) A combination of the above bonding types; or

(d) Bonds filed pursuant to the provisions of the Kentucky Bond Pool Program (405 KAR 10:200, KRS 350.595, and 350.700 through 350.755).

Section 4. Bonding Methods. The method of performance bonding for a permit area shall be selected by the applicant and approved by the cabinet prior to the issuance of a permit, and shall consist of one (1) of the following methods:

(1) Method "S" - single area bonding. A single area bond is a bond which covers the entire permit area as a single undivided area, for which the applicant shall file the entire bond amount required by the cabinet prior to issuance of the permit. Liability under the bond shall extend to every part of the permit area at all times. Except as provided in Section 9(2) of this administrative regulation regarding extended bond liability, there shall be no release of all or part of the bond amount for completion of a particular phase of reclamation on any part of the permit area under 405 KAR 10:040 until that phase of reclamation has been successfully completed on the entire permit area.

(2) Method "I" - incremental bonding. Incremental bonding is a method of bonding in which the permit area is divided into individual increments, each of which is bonded separately and independently, and for which bond is filed as operations proceed through the permit area.

(a) The permit area shall be divided into distinct increments which shall be subject to approval by the cabinet. Each increment shall be of sufficient size and configuration to provide for efficient reclamation operations should reclamation operations by the cabinet become necessary. If the approved postmining land use is of such nature that successful implementation of the postmining land use capability depends upon an area being integrally reclaimed, then that area shall be contained within a single increment. These increments shall be clearly identified on maps submitted in the permit application under 405 KAR Chapter 8, and the applicant shall describe the approximate time schedule for beginning operations in each increment.

(b) Prior to issuance of a permit, the applicant shall file with the cabinet the full bond amount required by the cabinet for the first increment or increments of the permit area to be disturbed, which shall be not less than the minimum bond required for the permit area required under Section 7 of this administrative regulation.

(c) The permittee shall not engage in any surface coal mining and reclamation operations on any increment of the permit area unless the full bond amount required by the cabinet has been filed with the appropriate regional office of the department for that increment, the cabinet has verified the validity of the bond, and written authorization to conduct surface coal mining and reclamation operations on that increment is issued by the administrator of the regional office. No credit shall be given for reclamation on other increments.

(d) The boundaries of each increment shall be physically marked at the site in a manner approved by the cabinet.

(e) The bond amount for an increment shall be released or forfeited independently of any other increment of the permit area, and liability under the performance bond shall extend only to the increment expressly covered by the bond. A single bond amount may be filed to cover more than one (1) increment, in which case the increments so covered shall be treated as a single increment.

(f) Except as provided in Section 9(2) of this administrative regulation regarding extended bond liability, there shall be no release of bond for completion of a phase of reclamation on any part of an increment until that phase of reclamation has been successfully completed on the entire increment.

(g) When the bond for an increment is completely released under 405 KAR 10:040, the increment shall be deleted from the permit area.

Section 5. Substitution of Bonds. (1) The cabinet may allow permittees to substitute existing surety or collateral bonds for equivalent surety or collateral bonds, if the liability which has accrued against the permittee on the permit area or increment is transferred to such substitute bonds.

(2) The cabinet shall not release existing performance bonds until the permittee has submitted and the cabinet has approved acceptable substitute performance bonds. A substitution of performance bonds pursuant to this section shall not constitute a release of bond under 405 KAR 10:040.

(3) The cabinet may refuse to allow substitution of bonds if an action for revocation or suspension of the permit covered by the bond is pending or if there is a pending action for forfeiture of the bond.

Section 6. Determination of Bond Amounts. (1) In determining the bond amount the cabinet shall estimate the cost to the cabinet if it had to perform the reclamation, restoration and abatement work required of a person who conducts surface coal mining and reclamation operations under KRS Chapter 350, 405 KAR Chapters 7 through 24 and the permit. This amount shall be based on:

(a) The estimated costs submitted by the permittee in accordance with 405 KAR 8:030, Section 24(4), and 405 KAR 8:040, Section 24(4);

(b) The additional estimated costs to the cabinet which may arise from applicable public contracting requirements or the need to bring personnel and equipment to the permit area after its abandonment by the permittee to perform reclamation, restoration, and abatement work;

(c) All additional estimated costs necessary, expedient, and incident to the satisfactory completion of the requirements identified in this section;

(d) An additional amount based on factors of cost changes during the previous five (5) years for the types of activities associated with the reclamation to be performed; and

(e) Such other cost information as may be required by or available to the cabinet.

(2) If the reclamation cost calculated submitted in a permit application is higher than the minimum bond or bond calculated by the cabinet, the higher calculation will be used in any issued permit.

(3) The cabinet shall review the bonding amounts identified in Sections 7 and 8 of this administrative regulation at a minimum of every two (2) years to determine if the amounts are adequate due to inflation and increases in reclamation costs.

Section 7. Minimum Bond Amount. The minimum amount of the bond for surface coal mining and reclamation operations at the time the permit is issued or amended shall be:

(1) $75,000 for the entire surface area under one (1) permit;

(2) $75,000 per increment for incrementally bonded permits, subject to Section 4(2) of this administrative regulation;

(3) $50,000 for a permit or increment operating on previously mined areas, as defined in of 405 KAR 8:001, Section 1(86), to be evaluated by the cabinet; or

(4) $10,000 for underground mines that have only underground operations.

Section 8. Bonding Rate of Additional Areas. Areas of a surface coal mine and reclamation operation shall be bonded at the following rates for any permit issued by the Division of Mine Permits:

(1) Coal haul roads, other mine access roads, and mine management areas shall be bonded at $2,500 per acre and each fraction thereof.

(2) Refuse disposal areas shall be bonded at a minimum rate of $7,500 per acre and each fraction thereof.

(3) An embankment sediment control pond shall be bonded at a rate of $10,000 per acre and each fraction thereof, with each pond being measured separately, if the pond is:

(a) Located off-bench; and

(b) Located downstream and outside the proposed mining or spoil storage area.

(c) This rate may be applied to partial embankment structures as deemed necessary by the cabinet to meet the requirements of Section 6(1) of this administrative regulation.

(4) Coal preparation plants shall be bonded at the base acreage rate, discussed in paragraph (6) of this Section, in addition to the costs associated with demolition and disposal costs relating to concrete, masonry, steel, timber, and other materials associated with surface coal mining and reclamation operations.

(5) Operations on previously mined areas, as defined in 405 KAR 8:001, Section 1(86), shall be bonded at rate of $2,000 per acre and each fraction thereof.

(6) All areas of surface coal mining and reclamation operations

not otherwise addressed in paragraphs (1) through (5) of this section shall be bonded at the rate of $3,500 per acre and each fraction thereof.

(7) (a) For permits that have been identified as a producer of long-term treatment drainage, the cabinet shall calculate an additional bond amount based on the estimated annual treatment cost, provided by the permittee and verified by the cabinet, multiplied by twenty years.

(b) The cost estimate is subject to verification and acceptance by the cabinet. The department shall use its own estimate for annual treatment costs if the department cannot verify the accuracy of the permittee's estimate.

(c) In lieu of this calculation, the permittee may submit a remediation plan to be approved by the cabinet for the areas deemed to be producing substandard drainage. The remediation plan shall demonstrate that substandard discharge will be permanently abated by land reclamation techniques prior to phase II bond release. If department rejects the plan, the permittee shall submit the additional acid mine drainage bond previously described in this section.

Section 9. Period of Liability. (1) Liability under performance bond applicable to an entire permit area or increment thereof shall continue until all reclamation, restoration and abatement work required of persons who conduct surface coal mining and reclamation operations under requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24 and the provisions of the permit have been completed, and the permit or increment terminated by release of the permittee from any further liability in accordance with 405 KAR 10:040.

(2) In addition to the period necessary to achieve compliance with all requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24 and the permit including the standards for the success of revegetation as required by 405 KAR 16:200 and 405 KAR 18:200, the period of liability under a performance bond shall continue for a period of five (5) years beginning with the last year of augmented seeding, fertilizing, irrigation or other work. The period of liability shall begin again whenever augmented seeding, fertilizing, irrigation or other work is required or conducted on the site prior to bond release. Isolated and clearly defined portions of a bonded area requiring extended liability because of augmentation may be separated from the original area and bonded separately upon approval by the cabinet. Such areas shall be limited in extent, and not constitute a scattered, intermittent, or checkerboard pattern of failure. Access to the separated areas for remedial work may be included in the area under extended liability if deemed necessary by the cabinet.

(3) If the cabinet approves a long-term intensive agricultural postmining land use in accordance with 405 KAR 16:210, augmented seeding, fertilization, irrigation or other husbandry practices normally associated with the approved postmining land use shall not require restarting the five (5) year period of liability.

(4) The bond liability of the permittee shall include only those actions which the permittee is required to take under the permit, including completion of the reclamation plan in such a manner that the land will be capable of supporting a postmining land use approved under 405 KAR 16:210. Actions of third parties which are beyond the control and influence of the permittee and for which the permittee is not responsible under the permit shall not be covered by the bond.

Section 10. Adjustment of Amount. (1) The amount of the performance bond liability applicable to a permit or increment shall be adjusted by the cabinet:

(a) When the acreage in the permit area or increment is either increased or decreased; or

(b) When the cabinet determines that the cost of future reclamation, restoration or abatement work has changed. When it is determined that an adjustment under this paragraph is necessary, the cabinet shall:

1. Notify the permittee, the surety, and any person with a property interest in collateral who has previously requested such notification in writing; and

2. Provide the permittee an opportunity for an informal conference on the adjustment. The requirements of 405 KAR 7:091 and 405 KAR 7:092 shall not apply to the conduct of the conference.

(2) The amount of the performance bond liability applicable to a permit or increment may be adjusted by the cabinet upon application by the permittee under 405 KAR 8:010, Section 20, to delete acreage from the permit area or increment thereof where such acreage has not been affected by the surface coal mining and reclamation operation. The provisions of 405 KAR 10:040, Section 2(3), shall apply. However, a reduction due to such deletion of acreage shall not constitute a bond release and shall not be subject to the procedures of 405 KAR 10:040, Section 1.

(3) The cabinet may grant reduction of the required performance bond amount if the permittee's method of operation or other circumstances will reduce the maximum estimated cost to the cabinet to complete the reclamation responsibilities and therefore warrant a reduction of the bond amount. The request shall not be considered as a request for partial bond release subject to the procedures of 405 KAR 10:040, Section 1.

(4) The cabinet shall refuse to approve any reduction of the performance bond liability amount if an action for revocation or suspension of the permit covered by the bond is pending, if there is a pending action for forfeiture of the bond, or if the permittee is currently in violation of 405 KAR Chapters 7 through 24 on that permit or increment.

Section 11. Supplemental Assurance. (1) If alternative distance limits or additional pits are approved under 405 KAR 16:020, Section 2, the applicant shall submit to the cabinet supplemental assurance in the amount set forth in this section. This supplemental assurance shall be for the purpose of assuring the reclamation of the additional unreclaimed disturbed area and shall be in addition to the performance bond required under 405 KAR Chapter 10. The applicant shall submit supplemental assurance on the cabinet form, Supplemental Assurance, SME-42 (SA), July 1994. This form shall be accompanied by the Escrow Agreement form (for use with Supplemental Assurance form only), SME-64 (SA), July 1994.

(a) The supplemental assurance shall not be subject to the bond release requirements of 405 KAR 10:040, but shall be returned in accordance with the requirements of this section.

(b) However, the requirements of Sections 2, 3, and 5 of this administrative regulation, 405 KAR 10:035, and 405 KAR 10:050 shall apply to supplemental assurance.

(2) Single seam contour mining. For single seam contour operations subject to 405 KAR 16:020, Section 2(3), the amount required shall be $150,000 per 1,500 feet, or any portion thereof, of additional distance approved for the first pit under 405 KAR 16:020, Section 2(3). If an additional pit or pits are approved, the amount shall be $150,000 per 1,500 feet, or any portion thereof, including the first 1,500 feet of each additional pit.

(3) Multiple seam contour mining. For multiple seam contour mining operations subject to of 405 KAR 16:020, Section 2(4), the amount required shall be $150,000 per 1,500 feet, or any portion thereof, of additional distance approved for the first multiple seam operation under of 405 KAR 16:020, Section 2(4). If any additional multiple seam operations are approved, the amount shall be $150,000 per 1,500 feet, or any portion thereof, including the first 1,500 feet of each additional multiple seam operation.

(4) Mountaintop removal. If a mountaintop removal operation begins by mining a contour cut around all or a portion of the mountaintop, that contour portion shall require the same supplemental assurance set forth in subsection (2) of this section.

(5) Area mining. The amount required shall be $150,000 for any four (4) spoil ridges, or any portion thereof, of additional distance approved for the first pit under 405 KAR 16:020, Section 2(1). If an additional pit or pits are approved, the amount shall be $150,000 for any four (4) spoil ridges, or any portion thereof, including the first four (4) spoil ridges of each additional pit.

(6) Return of supplemental assurance. Supplemental assurance shall be returned to the person that submitted it upon:

(a) Application to the cabinet for the return; and

(b) Inspection and written documentation (including photographs) by the cabinet verifying that the area for which the supplemental assurance was submitted has been backfilled and graded (or in the case of mountaintop removal, the associated highwall has been eliminated by mining operations).

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Performance Bond, Form SME-42", June 1999;

(b) "Irrevocable Standby Letter of Credit, Form SME-72", July 1994;

(c) "Confirmation of Irrevocable Standby Letter of Credit, Form SME-72-A", July 1994;

(d) "Supplemental Assurance, SME-42 (SA)", July 1994;

(e) "Escrow Agreement (for use with Supplemental Assurance form only), SME-64 (SA)", July 1994;

(f) "Escrow Agreement, Form SME-64", October 2008;

(g) "Remining Issues and Procedures, Reclamation Advisory Memorandum No. 154", May 2012; and

(h) "Performance Bond for Surface Coal Mining and Reclamation on Federal Lands, Form SME-42-F", June 1999.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Natural Resources, 2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: May 4, 2012

FILED WITH LRC: May 4, 2012 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 21, 2012 at 10:00 a.m. (Eastern Time) at Conference Room D-16 of the Department for Natural Resources at #2 Hudson Hollow, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing June 14, 2012, 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 July 2, 2012. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, #2 Hudson Hollow, Frankfort, Kentucky 40601, phone (502) 564-6940, fax (502) 564-5698, email Michael.Mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation specifies criteria for the base determination of bond amounts and requires certain periods of liability during which the bonds shall remain in effect. This administrative regulation also establishes requirements for filing and maintaining performance bonds, and provides for adjustments in bond amounts and additional information related to minimum bonds and application of bonds to ensure performance of the requirements of KRS Chapter 350 in the event work must be performed by the Cabinet, taking into consideration such things as topography, geology, future land use and the difficulty of reclamation.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide essential information on bonding mine sites in the event work must be performed by the cabinet.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 350.064 requires an applicant to file with the cabinet a reclamation bond for performance payable, as appropriate, to the state, and conditional upon faithful performance of all the requirements of this chapter and the permit. This administrative regulation provides essential details for this process.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by establishing the procedures for bonding and supplemental assurance.

(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: NA

(b) The necessity of the amendment to this administrative regulation: NA

(c) How the amendment conforms to the content of the authorizing statutes: NA

(d) How the amendment will assist in the effective administration of the statutes: NA

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact all surface coal mine permit holders. There are approximately 1844 total permits currently under bond.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This new administrative regulation will increase minimum bond amounts that entities will be required to comply with as part of providing a reclamation bond.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Each permit that is issued by the department will vary depending on the features and facilities contained in the permit. The most accurate way to represent this information is to give the percentage increase in the bonding amounts captured in this administrative regulation.

Facilities	Previous Amount	Proposed Amount	Percent Increase
Access Roads	$1000/acre	$2500/acre	150%
Sediment Structures	$1500/perm.pond ; $5000/temp.	$10,000/acre, minimum	100%
Refuse Disposal Areas	$2500/acre, plus site factors= $3500 average	$7500/acre, plus site factors= $9000 average	157%
Remining Areas	$1500/acre, plus site factors= $2500 average	$2000/acre, plus site factors= $3000 average	20%
All Other Mining Areas	$2500/acre, plus site factors= $3500 average	$3500/acre, plus site factors= $4500 average	29%
Supplemental Assurance	$50,000/1,500 ft, or additional pit	$150,000/1,500 ft, or additional pit	200%
Minimum Bond	$10,000/ permit	$75,000/permit or increment	650%

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will be supplying bonds that are more closely related to the actual costs of reclamation in case the cabinet is required to perform reclamation activities on their behalf.

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

(a) Initially: This new administrative regulation will not increase costs to the administrative body. Most of the elements in this administrative regulation are currently being performed because most of the elements are being moved from other administrative regulations within Chapter 10 into this one bonding administrative regulation. Therefore there are few additional duties.

(b) On a continuing basis: There will be no continuing costs to the agency.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General fund and federal fund dollars will be used to fund this 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: There will not be a need to increase fees or funding to administer this administra-

tive regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation will not increase nor does it establish any fees.

(9) TIERING: Is tiering applied? Yes. Bonding on permits will be tiered depending on the facilities and features permitted.

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 of Mine Permits and Division of Mine Reclamation and Enforcement.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.060, 350.062, 350.064, 350.093, 350.095, 350.100, 350.110, 350.151, 350.465

4. Estimate the effect of this administrative regulation on the expenditures and revenues 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 new administrative regulation will not generate any funds for use by the cabinet.

(b) How 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 new administrative regulation will not generate any funds for use by the cabinet on a continuing basis.

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

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

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: NA

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. Part 730

2. State Compliance Standards. KRS 350.064 and 405 KAR 10:015.

3. Minimum or uniform standards contained in the federal mandate. 30 C.F.R. 800.11 – 800.30

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. The Kentucky bonding program has additional requirements not addressed by regulations promulgated by the federal Office of Surface Mining, Reclamation, and Enforcement. The additional/different requirements are necessary to adequately bond surface mining site disturbances.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The Commonwealth's bonds for surface mine disturbances are inadequate and the cabinet has implemented additional/different standards in order to adequately bond these disturbances pursuant to KRS 350.064.

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

810 KAR 1:040. Drug, medication, and substance classification schedule and withdrawal guidelines.

RELATES TO: KRS 230.210, 230.215, 230.240, 230.260, 230.265, 230.290, 230.320

STATUTORY AUTHORITY: KRS 230.215, 230.240, 230.260, 230.320

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in Kentucky. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation establishes the drug classification schedule in effect in Kentucky and the withdrawal guidelines for permitted drugs, medications, and substances that may be administered to race horses competing in Kentucky.

Section 1. The Kentucky Horse Racing Commission Uniform Drug, Medication, and Substance Classification Schedule, KHRC 40-01, shall establish the respective classifications of all substances contained therein. The Kentucky Horse Racing Commission Withdrawal Guidelines Thoroughbred, Quarter Horse, Appaloosa and Arabian, KHRC 40-02, shall provide guidance and advice on withdrawal intervals as contained therein.

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

(a) "Kentucky Horse Racing Commission Uniform Drug, Medication, and Substance Classification Schedule", KHRC 40-01, April 2012; and

(b) "Kentucky Horse Racing Commission Withdrawal Guidelines Thoroughbred, Quarter Horse, Appaloosa and Arabian," KHRC 40-02, April 2012.

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

ROBERT M. BECK, JR., Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: May 10, 2012

FILED WITH LRC: May 11, 2012 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 27, 2012 at 9:00 a.m., at The Red Mile, The Red Mile Clubhouse, 1200 Red Mile Road, Lexington, Kentucky 40504. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by June 20, 2012, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 2, 2012. 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 incorporates the Kentucky Horse Racing Commission Uniform Drug, Medication and Substance Classification Schedule (the "Schedule") and the Kentucky Horse Racing Commission Withdrawal Guidelines Thoroughbred, Quarter Horse, Appaloosa and Arabian (the "Withdrawal Guidelines") by reference. The Schedule was previously incorporated by reference in 810 KAR 1:018. The Withdrawal Guidelines are also being incorporated by reference into this administrative regulation, because both documents are affected by scientific research and, thus, should be amended and updated on an ongoing basis. By incorporating the documents into their own regulation, the commission will have greater ability to make timely amendments based on developments in medical science. The Schedule establishes a classification system of regulated substances, and those classifications are then used to determine the appropriate penalty if there is a violation of 810 KAR 1:018 or 810 KAR 1:110. Thus, the Schedule provides notice to licensees regarding the potential penalty for use of a certain substance. The Withdrawal Guidelines provide licensees with recommendations on the withdrawal intervals of certain regulated substances.

(b) The necessity of this administrative regulation: This administrative regulation will give the commission the ability to amend the incorporated documents on an ongoing basis thereby providing licensees with the most up-to-date scientific information. The Schedule puts licensees on notice of how various regulated substances are classified. The classifications, in turn, dictate the penalties that will be levied if the substance in question is administered in violation of 810 KAR 1:018 or 810 KAR 1:110. The Withdrawal Guidelines are necessary to provide guidance to licensees regarding the regulated administration of certain medications and other substances prior to a horse competing in a race in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) mandates that the commission establish the conditions under which thoroughbred racing and pari-mutuel wagering thereon shall be conducted in Kentucky and charges it to, "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth." KRS 230.240(2) further requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. The Schedule classifies regulated substances to give notice to licensees and to allow the commission to levy the appropriate penalty in the event of a violation. The Withdrawal Guidelines provide licensees with recommendations on the withdrawal intervals of certain regulated substances.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Schedule classifies regulated substances, thereby providing notice to licensees and allowing the commission to levy the appropriate penalty in the event of a violation of 810 KAR 1:018 or 810 KAR 1:110. The Withdrawal Guidelines provide licensees with recommendations on the withdrawal intervals of certain regulated substances.

(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 addition to moving the two documents to their own new regulation, they have both been amended. The Schedule has been updated to reclassify certain substances and add others. The changes reflect recent developments in medical science. The Withdrawal Guidelines have been updated and additional threshold levels have been added.

(b) The necessity of the amendment to this administrative regulation: The Schedule has been updated to account for developments in medical science, with certain substances being reclassified and others being added. This amendment is necessary to insure that the Schedule reflects the current knowledge of medical science. The Withdrawal Guidelines have been updated and additional threshold levels have been added.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to the Schedule will insure that the commission regulates the use of medication and other substances in racehorses in a manner that is consistent with the latest developments in medical science. The Withdrawal Guidelines provide guidance to licensees on administration of certain regulated substances.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect licensed owners, trainers and veterinarians. It will also affect the commission as it regulates the use of medication and other substances on horses competing in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensees should take notice of the classifications provided in the Schedule and should follow the recommendations given in the Withdrawal Guidelines. The commission will use the Schedule to determine the appropriate penalties for violations of 810 KAR 1:018 and 810 KAR 1:110 and take into consideration compliance with the Withdrawal Guidelines when imposing a penalty.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance with this regulation will not result in any additional costs 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): Licensees and the commission will benefit from the updates included in the Schedule and Withdrawal Guidelines because the updates reflect developments in medical science.

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

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

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no funding necessary to implement or 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 funding is necessary.

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

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to the affected 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. Kentucky Revised Statutes 230.210, 230.215, 230.240, 230.260, 230.265, 230.290, 230.320.

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

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

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

(c) How much will it cost to administer this program for the first year? There will be no costs associated with the implementation of this regulation.

(d) How much will it cost to administer this program for subsequent years? There will be no costs associated with the implementation of this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

811 KAR 1:093. Drug, medication, and substance classification schedule and withdrawal guidelines.

RELATES TO: KRS 230.210, 230.215, 230.240, 230.260, 230.265, 230.290, 230.320

STATUTORY AUTHORITY: KRS 230.215, 230.240, 230.260, 230.320

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in Kentucky. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation establishes the drug classification schedule in effect in Kentucky and the withdrawal guidelines for permitted drugs, medications, and substances that may be administered to race horses competing in Kentucky.

Section 1. The Kentucky Horse Racing Commission Uniform Drug, Medication, and Substance Classification Schedule, KHRC 40-01, shall establish the respective classifications of all substances contained therein. The Kentucky Horse Racing Commission Withdrawal Guidelines Standardbred, KHRC 93-01, shall provide guidance and advice on withdrawal intervals as contained therein.

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

(a) "Kentucky Horse Racing Commission Uniform Drug, Medication, and Substance Classification Schedule", KHRC 40-01, April 2012; and

(b) "Kentucky Horse Racing Commission Withdrawal Guidelines Standardbred", KHRC 93-01, April 2012.

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

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

APPROVED BY AGENCY: May 10, 2012

FILED WITH LRC: May 11, 2012 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 27, 2012 at 9:00 a.m., at The Red Mile, The Red Mile Clubhouse, 1200 Red Mile Road, Lexington, Kentucky 40504. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by June 20, 2012, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 2, 2012. 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 incorporates the Kentucky Horse Racing Commission Uniform Drug, Medication, and Substance Classification Schedule (the "Schedule") and the Kentucky Horse Racing Commission Withdrawal Guidelines Standardbred (the "Withdrawal Guidelines") by reference. The Schedule was previously incorporated by reference in 811 KAR 1:090. The Withdrawal Guidelines are also being incorporated by reference into this administrative regulation, because both documents are affected by scientific research and, thus, should be amended and updated on an ongoing basis. By incorporating the documents into their own regulation, the commission will have greater ability to make timely amendments based on developments in medical science. The Schedule establishes a classification system of regulated substances, and those classifications are then used to determine the appropriate penalty if there is a violation of 811 KAR 1:090 or 811 KAR 1:240. Thus, the Schedule provides notice to licensees regarding the potential penalty for use of a certain substance. The Withdrawal Guidelines provide licensees with recommendations on the withdrawal intervals of certain regulated substances.

(b) The necessity of this administrative regulation: This administrative regulation will give the commission the ability to amend the incorporated documents on an ongoing basis thereby providing licensees with the most up-to-date scientific information. The Schedule puts licensees on notice of how various regulated substances are classified. The classifications, in turn, dictate the penalties that will be levied if the substance in question is administered in violation of 811 KAR 1:090 or 811 KAR 1:240. The Withdrawal Guidelines are necessary to provide guidance to licensees regarding the regulated administration of certain medications and other substances prior to a horse competing in a race in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) mandates that the commission establish the conditions under which thoroughbred racing and pari-mutuel wagering thereon shall be conducted in Kentucky and charges it to, "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth." KRS 230.240(2) further requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. The Schedule classifies regulated substances to give notice to licensees and to allow the commission to levy the appropriate penalty in the event of a violation. The Withdrawal Guidelines provide licensees with recommendations on the withdrawal intervals of certain regulated substances.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Schedule

classifies regulated substances, thereby providing notice to licensees and allowing the commission to levy the appropriate penalty in the event of a violation of 811 KAR 1:090 or 811 KAR 1:240. The Withdrawal Guidelines provide licensees with recommendations on the withdrawal intervals of certain regulated substances.

(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 addition to moving the two documents to their own new regulation, they have both been amended. The Schedule has been updated to reclassify certain substances and add others. The changes reflect recent developments in medical science. The Withdrawal Guidelines have been updated and additional threshold levels have been added.

(b) The necessity of the amendment to this administrative regulation: The Schedule has been updated to account for developments in medical science, with certain substances being reclassified and others being added. This amendment is necessary to insure that the Schedule reflects the current knowledge of medical science. The Withdrawal Guidelines have been updated and additional threshold levels have been added.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to the Schedule will insure that the commission regulates the use of medication and other substances in racehorses in a manner that is consistent with the latest developments in medical science. The Withdrawal Guidelines provide guidance to licensees on administration of certain regulated substances.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect licensed owners, trainers and veterinarians. It will also affect the commission as it regulates the use of medication and other substances on horses competing in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensees should take notice of the classifications provided in the Schedule and should follow the recommendations given in the Withdrawal Guidelines. The commission will use the Schedule to determine the appropriate penalties for violations of 811 KAR 1:090 and 811 KAR 1:240 and take into consideration compliance with the Withdrawal Guidelines when imposing a penalty.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance with this regulation will not result in any additional costs 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): Licensees and the commission will benefit from the updates included in the Schedule and Withdrawal Guidelines because the updates reflect developments in medical science.

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

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

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no funding necessary to implement or 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 funding is necessary.

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

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to the affected 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. Kentucky Revised Statutes 230.210, 230.215, 230.240, 230.260, 230.265, 230.290, 230.320.

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

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

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

(c) How much will it cost to administer this program for the first year? There will be no costs associated with the implementation of this regulation.

(d) How much will it cost to administer this program for subsequent years? There will be no costs associated with the implementation of this regulation.

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

Revenues (+-):

Expenditures (+/-):

Other Explanation:

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

811 KAR 2:093. Drug, medication, and substance classification schedule and withdrawal guidelines.

RELATES TO: KRS 230.210, 230.215, 230.240, 230.260, 230.265, 230.290, 230.320

STATUTORY AUTHORITY: KRS 230.215, 230.240, 230.260, 230.320

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in Kentucky. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation establishes the drug classification schedule in effect in Kentucky and the withdrawal guidelines for permitted drugs, medications, and substances that may be administered to race horses competing in Kentucky.

Section 1. The Kentucky Horse Racing Commission Uniform Drug, Medication, and Substance Classification Schedule, KHRC 40-01, shall establish the respective classifications of all substances contained therein. The Kentucky Horse Racing Commission

Withdrawal Guidelines Thoroughbred, Quarter Horse, Appaloosa and Arabian, KHRC 40-02, shall provide guidance and advice on withdrawal intervals as contained therein.

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

(a) "Kentucky Horse Racing Commission Uniform Drug, Medication, and Substance Classification Schedule", KHRC 40-01, April 2012; and

(b) "Kentucky Horse Racing Commission Withdrawal Guidelines Thoroughbred, Quarter Horse, Appaloosa and Arabian", KHRC 40-02, April 2012.

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

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

APPROVED BY AGENCY: May 10, 2012

FILED WITH LRC: May 11, 2012 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 27, 2012 at 9:00 a.m., at The Red Mile, The Red Mile Clubhouse, 1200 Red Mile Road, Lexington, Kentucky 40504. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by June 20, 2012, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 2, 2012. 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 incorporates the Kentucky Horse Racing Commission Uniform Drug, Medication, and Substance Classification Schedule (the "Schedule") and the Kentucky Horse Racing Commission Withdrawal Guidelines Thoroughbred, Quarter Horse, Appaloosa and Arabian (the "Withdrawal Guidelines") by reference. The Schedule was previously incorporated by reference in 811 KAR 2:096. The Withdrawal Guidelines are also being incorporated by reference into this administrative regulation, because both documents are affected by scientific research and, thus, should be amended and updated on an ongoing basis. By incorporating the documents into their own regulation, the commission will have greater ability to make timely amendments based on developments in medical science. The Schedule establishes a classification system of regulated substances, and those classifications are then used to determine the appropriate penalty if there is a violation of 811 KAR 2:096 or 811 KAR 2:150. Thus, the Schedule provides notice to licensees regarding the potential penalty for use of a certain substance. The Withdrawal Guidelines provide licensees with recommendations on the withdrawal intervals of certain regulated substances.

(b) The necessity of this administrative regulation: This administrative regulation will give the commission the ability to amend the incorporated documents on an ongoing basis thereby providing licensees with the most up-to-date scientific information. The Schedule puts licensees on notice of how various regulated substances are classified. The classifications, in turn, dictate the penalties that will be levied if the substance in question is administered in violation of 811 KAR 2:096 or 811 KAR 2:150. The Withdrawal Guidelines are necessary to provide guidance to licensees regarding the regulated administration of certain medications and other substances prior to a horse competing in a race in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) mandates that the commission establish the conditions under which thoroughbred racing and pari-mutuel wagering thereon shall be conducted in Kentucky and charges it to, "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth." KRS 230.240(2) further requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. The Schedule classifies regulated substances to give notice to licensees and to allow the commission to levy the appropriate penalty in the event of a violation. The Withdrawal Guidelines provide licensees with recommendations on the withdrawal intervals of certain regulated substances.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Schedule classifies regulated substances, thereby providing notice to licensees and allowing the commission to levy the appropriate penalty in the event of a violation of 811 KAR 2:096 or 811 KAR 2:150. The Withdrawal Guidelines provide licensees with recommendations on the withdrawal intervals of certain regulated substances.

(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 addition to moving the two documents to their own new regulation, they have both been amended. The Schedule has been updated to reclassify certain substances and add others. The changes reflect recent developments in medical science. The Withdrawal Guidelines have been updated and additional threshold levels have been added.

(b) The necessity of the amendment to this administrative regulation: The Schedule has been updated to account for developments in medical science, with certain substances being reclassified and others being added. This amendment is necessary to insure that the Schedule reflects the current knowledge of medical science. The Withdrawal Guidelines have been updated and additional threshold levels have been added.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to the Schedule will insure that the commission regulates the use of medication and other substances in racehorses in a manner that is consistent with the latest developments in medical science. The Withdrawal Guidelines provide guidance to licensees on administration of certain regulated substances.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect licensed owners, trainers and veterinarians. It will also affect the commission as it regulates the use of medication and other substances on horses competing in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensees should take notice of the classifications provided in the Schedule and should follow the recommendations given in the Withdrawal Guidelines. The commission will use the Schedule to determine the appropriate penalties for violations of 811 KAR 2:096 and 811 KAR 2:150 and take into

consideration compliance with the Withdrawal Guidelines when imposing a penalty.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance with this regulation will not result in any additional costs 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): Licensees and the commission will benefit from the updates included in the Schedule and Withdrawal Guidelines because the updates reflect developments in medical science.

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

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

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no funding necessary to implement or 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 funding is necessary.

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

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to the affected 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. Kentucky Revised Statutes 230.210, 230.215, 230.240, 230.260, 230.265, 230.290, 230.320.

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

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

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

(c) How much will it cost to administer this program for the first year? There will be no costs associated with the implementation of this regulation.

(d) How much will it cost to administer this program for subsequent years? There will be no costs associated with the implementation of this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Governor's Office of Electronic Health Information
(New Administrative Regulation)

900 KAR 9:010. Kentucky Health Information Exchange participation.

RELATES TO: KRS 216.267

STATUTORY AUTHORITY: KRS 194A.030, KRS 194A.050, KRS 205.520

NECESSITY, FUNCTION, AND CONFORMITY: The Governor's Office of Electronic Health Information (GOEHI) within the Cabinet for Health and Family Services seeks to improve patient care, reduce medical errors, and make more efficient use of health care dollars by reducing redundant services. To facilitate that effort, GOEHI has implemented a Kentucky Health Information Exchange (KHIE). This administrative regulation establishes the procedures for participation by healthcare providers in the KHIE.

Section 1. Definitions. (1) "CCD" means the Continuity of Care Document as defined by the Health Information Technology Standards Panel (HITSP) of the American National Standards Institute (ANSI), which may be found at http://wiki.hitsp.org/docs/C32/C32-1.html.

(2) "Edge services" means hardware and software technology used in the storage and transmission of participant data.

(3) "Healthcare provider" is defined by KRS 311.621.

(4) "HIPAA" is defined by KRS 216.263.

(5) "HL7 transaction" means the specifications for electronic data exchange by healthcare environments as defined by ANSI that may be found at http://www.hl7.org/implement/standards/ansiapproved.cfm?ref=nav.

(6) "Interface" means the point of interaction or communication between the participant's health information system and the KHIE.

Section 2. Participation in the KHIE. In order to participate in the KHIE the healthcare provider shall have entered into an agreement, using either the GOEHI – Form 1A, GOEHI, Governor's Office of Electronic Health Information Exchange Hospital Participation Agreement or the GOEHI – Form 1B, GOEHI Governor's Office of Electronic Health Information Exchange Participation Agreement, the agreement has not been terminated, and the healthcare provider is:

(1) A covered entity as defined by HIPAA;

(2) The Kentucky Department for Medicaid Services; or

(3) The Kentucky State Laboratory, Division of Laboratory Services, Department of Public Health.

Section 3. Kentucky Health Information Exchange services. KHIE shall provide information sharing and software for the following:

(1) A CCD interface using web services to support data exchange with participants;

(2) Support for a standard series of HL7 transactions sent from the healthcare providers' health information system via secure edge services for storage and retrieval; and

(3) Collaboration with participants to support development of the interfaces required for participants to connect to KHIE.

Section 4. Participant responsibilities. Participants are responsible for building interfaces to connect to the KHIE.

Section 5. Data exchanged by the Kentucky Health Information Exchange. KHIE will exchange data and make data available consisting of patient admission, discharge and transfer systems, laboratory systems, diagnostic imaging systems, medication histories, allergies, and technologically available patient information required to support data exchange.

Section 6. Access to data by participants. Participants may access data through the KHIE as well as provide data through the KHIE for access by other participants.

Section 7. Access to other health information exchanges. GOEHI may establish arrangements with other health information exchanges to allow participants access to data permitted by the GOEHI – Form 1A, or GOEHI – Form 1B.

Section 8. Recipient of Kentucky Health Information Exchange Services. (1) A healthcare provider that is participating in the KHIE pursuant to this administrative regulation may qualify to become a recipient of KHIE services upon:

(a) Validation of any KHIE Go-Live transaction by the participant and the GOEHI; and

(b) Completion of the GOEHI – Form 2A, Kentucky Health Information Exchange Go-Live Approval Document for Edge Services, or GOEHI – Form 2B, Kentucky Health Information Exchange Go-Live Approval Document for Web Services.

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

(a) "GOEHI – Form 1A, Governor's Office of Electronic Health Information Exchange Hospital Participation Agreement", May, 2012;

(b) "GOEHI – Form 1B, Governor's Office of Electronic Health Information Exchange Participation Agreement Other Providers", May, 2012;

(c) "GOEHI – Form 2A, Kentucky Health Information Exchange Go-Live Approval Document for Edge Services,=", May, 2012; and

(d) "GOEHI – Form 2B, Kentucky Health Information Exchange Go-Live Approval Document for Web Services", May, 2012.

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

POLLY MULLINS-BENTLEY, Acting Executive Director
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: May 14, 2012

FILED WITH LRC: May 15, 2012 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on June 21, 2012, 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 June 14, 2012, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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 July 2, 2012 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: Polly Mullins-Bentley or Karen Chrisman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for participation in and services provided by the Kentucky Health Information Exchange with the Governor's Office of Electronic Health Information.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statutes, KRS 194A.030, KRS 194A.050, KRS 205.520

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes, KRS 194A.030, KRS 194A.050, KRS 205.520 by establishing the requirements for participation in and services by the Kentucky Health Information Exchange for the orderly administration of the exchange.

(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 194A.030, KRS 194A.050, KRS 205.520 by establishing the requirements for participation and services provided by the exchange to Kentucky healthcare providers and assists for the orderly administration of the Kentucky Health Information Exchange.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects any entity that desires to pass protected health information in a secure environment. There could be 7,703 Kentucky healthcare providers that connect to the Kentucky Health Information Exchange.

(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 do not have to connect to the KHIE. If they choose to do so, this regulation provides the sequential process for the orderly administration of the connection to the exchange.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Healthcare providers can use the connection to KHIE to meet Meaningful Use Menu measures and receive federal incentive payments. Healthcare providers will also have access to patient healthcare data leading to improvements in patient care.

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

(a) Initially: No additional costs will be incurred to implement this regulation as part of our normal operations.

(b) On a continuing basis: No additional costs will be incurred to implement this regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation and enforcement of this administrative regulation will be from the Governor's Office of Electronic Health Information's existing budget.

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including

cities, counties, fire departments, or school districts)? Yes.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects the Governor's Office of Electronic Health Information 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 194A.030, KRS 194A.050, KRS 205.520

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation on a continuing basis.

(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:

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of May 8, 2012

Call to Order and Roll Call

The May meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, May 8, 2012, at 1:00 p.m., in Room 149 of the Capitol Annex. Representative Johnny Bell, Co-Chair, called the meeting to order, the roll call was taken. The minutes of the April 2012 meeting were approved.

Present were:

Members: Senators Joe Bowen and Joey Pendleton, and Representatives Johnny Bell, Danny Ford, and Jimmie Lee.

LRC Staff: Dave Nicholas, Donna Little, Emily Caudill, Sarah Amburgey, Emily Harkenrider, Karen Howard, Betsy Cupp, and Laura Napier.

Guests: Becky Gilpatrick, Melissa Justice, Kentucky Higher Education Assistance Authority; Mike Carr, Alicia Sneed, Education Professional Standards Board; Whitney Meagher, Personnel Cabinet; Nathan Goldman, Sharon Mercer, Board of Nursing; Jim Grawe, Margaret Hazlette, Board of Social Work; Jim Grawe, Larry Disney, Kentucky Real Estate Appraisers Board; Ron Brooks, Margaret Everson, Mark Mangeot, Karen Waldrop; Kentucky Department of Fish and Wildlife; Amy Barker, Department of Corrections; Steve Lynn, Department of Criminal Justice; Ann D'Angelo, Rick Taylor, Transportation Cabinet; Kevin C. Brown, Department of Education; Chad Collins, Julian Tackett, Kentucky High School Athletics Association; Mark Brengelman, Mark Schmidt, Board of Home Inspectors; Virginia Carrington, and Elizabeth Caywood, Cabinet for Health and Family Services.

The Administrative Regulation Review Subcommittee met on Tuesday, May 8, 2012, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY: Division of Student and Administrative Services: Authority

11 KAR 4:080. Student aid applications. Becky Gilpatrick, director, Student Aid Services, and Melissa Justice, senior associate counsel, represented the authority.

A motion was made and seconded to approve the following amendment: to amend Section 1(4)(a) to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

KHEAA Grant Programs

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

EDUCATION PROFESSIONAL STANDARDS BOARD: Certification Procedures

16 KAR 4:030. Out-of-state preparation. Mike Carr, director of certification, and Alicia A. Sneed, director of legal services, represented the board.

In response to a question by Co-Chair Bowen, Ms. Sneed stated that Kentucky's certification procedures for out-of-state educator preparation were commensurate with sister states that participated in the national group.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE and Sections 2 and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 2 to make a conforming amendment to correct an inconsistency between the effective administrative regulation and the proposed filed administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

PERSONNEL CABINET: Personnel Cabinet, Classified

101 KAR 2:102. Classified leave administrative regulations. Whitney Meagher, attorney, represented the cabinet.

In response to a question by Co-Chair Bowen, Ms. Meagher stated that these administrative regulations included more complex specifications regarding workers' compensation because personnel benefits in private industry tended to be more limited than comparable benefits available to state government employees.

101 KAR 2:140. Workers' Compensation Fund and Program.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 4, 5, 7, and 8 and two (2) forms incorporated by reference to: (a) comply with the drafting and formatting requirements of KRS Chapter 13A; and (b) clarify that the administrative regulation applies to employees who are away from work due to a work-related illness, as well as those away from work due to a work-related injury; (2) to amend Section 2 to specify that the employee's accumulated leave shall be reinstated to the employee's leave balance to the extent that workers' compensation benefits are remitted to the employee's agency; and (3) to amend Section 8 to update the forms incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

Personnel Cabinet, Unclassified

101 KAR 3:015. Leave administrative regulations for the unclassified service.

GENERAL GOVERNMENT CABINET: Board of Nursing: Board

201 KAR 20:490. Licensed practical nurse intravenous therapy scope of practice. Nathan Goldman, general counsel, and Sharon Mercer, nursing practice consultant, represented the board.

In response to a question by Co-Chair Bell, Ms. Mercer stated that this administrative regulation had been effective since 2004. The board received requests for clarification of requirements. These requests were the impetus to amend this administrative regulation. Mr. Goldman stated that this administrative regulation expanded the scope of practice for a licensed practical nurse pertaining to intravenous therapy. The scope of practice remained within specific limits, and nursing schools were responsible for providing rigorous requirements to maintain public safety.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 5 and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to add a SUMMARY OF MATERIAL INCORPORATED BY REFERENCE to provide statutorily required information about the new document incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

Board of Social Work: Board

201 KAR 23:015. Temporary permission to practice. Jim Grawe, assistant attorney general, and Margaret Hazlette, executive director, represented the board.

In response to questions by Co-Chair Bowen, Ms. Hazlette stated that a temporary licensee was subject to at least one (1) hour of supervision for the protection of public health. Temporary licensure allowed retention of employment until a licensee was fully certified. Examinations were offered every three (3) months.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Kentucky Real Estate Appraisers Board: Board

201 KAR 30:050. Examination and experience requirement. Larry Disney, executive director, and Jim Grawe, assistant attorney general, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a citation; (2) to amend Section 2 to correct a citation; and (3) to amend Section 1 to comply with the drafting and formatting re-

quirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Fish

301 KAR 1:201. Recreational fishing limits. Ron Brooks, director, Division of Fisheries; Margaret Everson, acting counsel; and Karen Waldrop, director, Division of Wildlife, represented the department.

In response to a question by Senator Pendleton, Mr. Brooks stated that there were no public comments received by the department during the public comment period.

In response to a question by Co-Chair Bowen, Mr. Brooks stated that urban lakes had different fishing pressures due to higher use in more densely populated areas. Urban lakes were "overstocked" to compensate. Additionally, some lakes had water quantity levels that resulted in management challenges.

In response to a question by Representative Lee, Mr. Brooks stated that, for certain species, the increase in "catch and release" fishing over actual harvesting reduced population pressures; however, the "catch and release" survival rate was limited depending on the time of year, the stress of being caught, and the precatch health of each fish. Some fish, such as crappie, were less likely to be caught and released and more likely to be harvested and eaten.

In response to a question by Co-Chair Bell, Mr. Brooks stated that this administrative regulation limited the taking of large and small mouth bass in some waters because of pressure on the fish populations. The department established harvest restrictions to prevent overfishing and to protect the quality and quantity of fish to ensure a positive fishing experience for all sportsmen. Due to the high number of bass harvested recently, most bass were now being taken before they were even twelve (12) inches in length.

Game

301 KAR 2:251. Hunting and trapping seasons and limits for furbearers.

In response to questions by Co-Chair Bell, Dr. Waldrop stated that the expanded raccoon season was October through February. The expanded season was supported by the department because the population was stable enough to withstand the extended season. The department would investigate the reason the Professional Kennel Club's hunting opportunities had migrated to Illinois two (2) years ago.

Co-Chair Bell stated that he was in opposition to the expanded raccoon season and that sportsmen and houndsmen groups also opposed the amended season and were not notified of the change.

In response to questions by Co-Chair Bowen, Dr. Waldrop stated that the sandhill crane season was considered a success by the department. Approximately fifty (50) sandhill crane were harvested. The department had to advertise the hunt fairly late because of the effective date of the administrative regulation. Additionally, the sandhill crane was harder to hunt than most sportsmen expected. The department expected hunters to improve as they learned the nuances of hunting the species. The department did not receive many permit requests for the season from citizens who did not intend to hunt the sandhill crane.

In response to a question by Senator Pendleton, Dr. Waldrop stated that permit requests came primarily from hunters who were traditional license buyers.

In response to a question by Representative Lee, Dr. Waldrop stated that the department was unaware of any instances of a whooping crane being taken by accident during the sandhill crane season. The season was scheduled to protect whooping cranes from misidentification.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 8, and 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary

501 KAR 6:091. Repeal of 501 KAR 6:090. Amy Barker, assistant general counsel, represented the department.

501 KAR 6:200. Comprehensive sex offender presentence evaluation procedure.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 6:240. Home incarceration using an approved monitoring device.

A motion was made and seconded to approve the following amendments: to amend Section 1 and the material incorporated by reference to clarify provisions and to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Kentucky Law Enforcement Council: Council

503 KAR 1:110. Department of Criminal Justice Training basic training: graduation requirements; records. Steve Lynn, assistant general counsel, represented the council.

In response to questions by Co-Chair Bell, Mr. Lynn stated that the test score requirements were being increased because test provider scoring standards had been revised. Most cadets completed the tests satisfactorily. There was a process for those who did not pass the examinations on the first attempt, so that cadets could retake the tests.

A motion was made and seconded to approve the following amendments: to amend Section 5 to make conforming amendments to correct inconsistencies between the currently effective administrative regulation and the filed proposed administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

General Training Provision

503 KAR 3:070. Telecommunications (Public Safety Dispatch Non-CJIS) Academy.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 and 5 to update agency names; and (2) to amend Section 4 to make a conforming amendment to correct an inconsistency between the currently effective administrative regulation and the filed proposed administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Division of Motor Carriers: Division

601 KAR 1:018. Special overweight or overdimensional motor vehicle load permits. Ann DAngelo, assistant general counsel, and Rick Taylor, deputy commissioner, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE, the RELATES TO paragraph, and Sections 1, 2, 4, 9, 10, and 20 to correct inconsistencies between the effective administrative regulation and the proposed administrative regulation filed by the agency; (2) to amend the RELATES TO paragraph to add a statutory citation; and (3) to amend Sections 1 through 14 and 16 through 21 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

601 KAR 1:019. Overweight or overdimensional farm equipment.

Senator Pendleton thanked the cabinet, Transportation Committee staff, and Subcommittee staff for working to amend this administrative regulation. He stated that this administrative regulation did not compromise safety and codified what approximately ninety-nine (99) percent of farmers were already doing. It was extremely important that the cabinet quickly provide a new guidance manual to applicable law enforcement personnel so that the revi-

sions and clarifications would be properly enforced as soon as this administrative regulation became effective.

In response to questions by Representative Ford, Mr. Taylor stated that a farmer with overweight truck questions or concerns was welcome to contact the cabinet with details, and the cabinet would follow up.

In response to a question by Co-Chair Bell, Mr. Taylor stated that this administrative regulation was more lenient than previous requirements and was reorganized to be more user friendly.

In response to a question by Co-Chair Bowen, Mr. Taylor stated that this administrative regulation did not compromise safety.

A motion was made and seconded to approve the following amendments: (1) to amend Section 7 regarding escort requirements, to: (a) establish that a single vehicle and load of farm equipment not exceeding forty-five (45) miles per hour operating on a four (4) lane highway shall have at least one (1) trail escort; (b) establish that a single vehicle and load of farm equipment 120 feet in length or more operating on a four (4) lane highway, shall have at least one (1) trail vehicle; (c) make technical corrections and minor corrections for compliance with the drafting and formatting requirements of KRS Chapter 13A; (d) comply with HB 518; and (e) reorganize requirements so that the user finds escort requirements based on vehicle specifications, rather than listing vehicle specifications under escort headings; (2) to amend the TITLE and Sections 1 through 6 and 8 through 13 to comply with the drafting and formatting requirements of KRS Chapter 13A; (3) to amend the RELATES TO paragraph to correct statutory citations; (4) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (5) to amend Section 7 to clarify convoy requirements on a two (2) lane highway; and (6) to amend Sections 8 and 10 through 12 for compliance with 2012 House Bill 518 and to clarify and reorganize requirements. Without objection, and with agreement of the agency, the amendments were approved.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Kentucky Board of Education: Department of Education: School Terms, Attendance and Operation

702 KAR 7:065. Designation of agent to manage high school interscholastic athletics. Kevin C. Brown, general counsel; Chad Collins, general counsel; and Julian Tackett, commissioner, represented the Kentucky High School Athletic Association.

In response to questions by Co-Chair Bowen, Mr. Tackett stated that this administrative regulation had been considered by the schools and associations. The main revisions included simplification of transfer and recruiting requirements, amendment of coaching requirements, and the establishment of standard consent forms for physicians and parents. Additionally, the amendments provided clarification and made technical corrections. Each complaint had multiple and different variables, requiring case-by-case consideration. The association's goal was to provide as fair a playing field as possible for all athletes. Accountability was the biggest challenge because of the volume of unique circumstances for consideration.

In response to a question by Co-Chair Bell, Mr. Tackett stated that, in approximately 1985, the association had changed its paradigm regarding accessibility and consideration of complaints. Many cases did not reach the full hearing by an officer or the board because concerns could be resolved at earlier stages. The procedures were more kid-friendly and more nuanced, taking into account many unique variables as necessary. Determinations had been expedited because complainants no longer had to wait for the monthly board meeting for a response on behalf of the association.

A motion was made and seconded to approve the following amendments: to amend Section 5 and the material incorporated by reference 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 Home Inspectors: Board

815 KAR 6:010. Home inspector licensing requirements and maintenance of records. Mark Brengelman, assistant attorney general, and Mark Schmidt, chair, represented the board.

In response to questions by Representative Ford, Mr. Schmidt stated that prelicensure education was required if the candidate failed the examination three (3) times and wished to continue seeking licensure. The board was authorized to deny licensure based on criminal conviction. Mr. Brengelman stated that board criteria for determining licensure denial included the seriousness of the offense, the length of time since the offense, and the applicant's or licensee's showing of remorse, rehabilitation, and restitution by clear and convincing evidence.

In response to questions by Co-Chair Bell, Mr. Brengleman stated that the criteria for the determination of license denial based on criminal conviction was not previously established in this administrative regulation. The board had a due process system for an applicant or licensee who had been denied licensure by the board, and the applicant or licensee was also able to have the issue considered by circuit court if the board's due process system still left the applicant or licensee unsatisfied. The board's due process system was authorized by and developed according to KRS Chapter 13B.

Subcommittee staff stated that the board was made of practitioners in the field of home inspection, who should be a good judge of what criminal conviction circumstances warranted denial of licensure. If an applicant or licensee was not satisfied after denial of the board, the applicant or licensee could appeal through the KRS Chapter 13B hearing procedures or bring the matter to the circuit court. Most boards had similar standards.

Co-Chair Bowen stated that Mr. Schmidt was an excellent contractor.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1 through 7 and 9 through 11 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (4) to amend Section 11 to make conforming amendments to correct inconsistencies between the effective administrative regulation and the proposed administrative regulation filed by the agency. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 6:070. Per diem and reimbursement for traveling and other expenses for board members.

In response to a question by Representative Ford, Mr. Schmidt stated that the board member per diem currently was thirty-five (35) dollars per meeting and it was being raised by amendment to $100, which was commensurate with most other board per diems. Reimbursable expenditures were limited to the actual cost of necessary expenditures, but there was not a limit established.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE, the RELATES TO paragraph, and Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Community Based Services: Division of Family Support: K-TAP, Kentucky Works, Welfare to Work, State Supplementation

921 KAR 2:015 & E. Supplemental programs for persons who are aged, blind, or have a disability. Elizabeth Caywood, internal policy analyst, and Virginia Carrington, branch manager, represented the division.

In response to a question by Co-Chair Bell, Ms. Carrington stated that the Michelle P. Waiver pertained to the Medicaid program only and did not impact this administrative regulation.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1, 7, and 13 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement

of the agency, the amendments were approved.

Food Stamp Program
921 KAR 3:035. Certification process.

The following administrative regulations were deferred to the June 12, 2012, meeting of the Subcommittee:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Kentucky Board of Education: Department of Education: General Administration
702 KAR 1:160. School health services.

Kindergartens and Nursery Schools
704 KAR 5:070. Common Kindergarten entry screener.

The Subcommittee adjourned at 2:30 p.m. until June 12, 2012.

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.

SENATE STANDING COMMITTEE ON HEALTH AND WELFARE
Meeting on March 21, 2012

The following administrative regulations were available for consideration and placed on the agenda of the Senate Standing Committee on Health and Welfare for its meeting of March 21, 2012, having been referred to the Committee on March 7, 2012, pursuant to KRS 13A.290(6):

201 KAR 20:056
201 KAR 20:057
201 KAR 22:020
201 KAR 22:070
201 KAR 32:010
201 KAR 32:020
201 KAR 32:025
201 KAR 32:035
201 KAR 32:045
201 KAR 32:050
201 KAR 32:060
201 KAR 36:060
201 KAR 36:070
900 KAR 7:030
908 KAR 3:050

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the March 21, 2012 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates **L - 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 **L - 15**

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 **L - 27**

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 **L - 28**

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	2542	6-3-11
31 KAR 6:030E	2352	3-10-11
Replaced	2828	7-1-11
32 KAR 1:030E	1381	11-2-10
Replaced	2828	3-4-11
32 KAR 1:190E	1382	11-2-10
Replaced	1504	3-4-11
32 KAR 2:130E	2130	2-7-11
Replaced	2256	6-3-11
101 KAR 2:095E	2522	3-31-11
Replaced		(See 38 Ky.R.)
101 KAR 2:102E	2525	3-31-11
Replaced		(See 38 Ky.R.)
101 KAR 3:015E	2530	3-31-11
Replaced		(See 38 Ky.R.)
103 KAR 15:195E	2535	4-1-11
Replaced		(See 38 Ky.R.)
201 KAR 8:008E	2807	4-21-11
Expired		10-18-11
201 KAR 8:532E	2808	4-21-11
Replaced		(See 38 Ky.R.)
201 KAR 8:550E	2143	2-2-11
Replaced	2876	8-5-11
201 KAR 8:562E	2812	4-21-11
Replaced		(See 38 Ky.R.)
201 KAR 43:010E	2817	4-29-11
Replaced		(See 38 Ky.R.)
201 KAR 43:020E	2818	4-29-11
Replaced	3032	12-2-11
201 KAR 43:030E	2820	4-29-11
Replaced	3034	12-2-11
201 KAR 43:040E	2821	4-29-11
Replaced	3035	12-2-11
401 KAR 51:052E	2352	3-14-11
Replaced		8-4-11
815 KAR 10:070E	2824	5-10-11
Replaced		(See 38 Ky.R.)
900 KAR 5:020E	3005	5-6-11
Replaced		10-19-11
922 KAR 1:420E	1960	1-3-11
Expired	****	7-2-11

ORDINARY ADMINISTRATIVE REGULATIONS:

Regulation Number	37 Ky.R. Page No.	Effective Date
13 KAR 2:060		
Amended	2250	
As Amended	2539	6-3-11
16 KAR 3:050		
Amended	1500	
As Amended	1963	3-1-11
16 KAR 6:030		
Amended	2665	7-11-11
31 KAR 5:010		
Amended	2254	
As Amended	2542	6-3-11
31 KAR 6:030		
Amended	2443	
As Amended	2828	7-1-11
32 KAR 1:030		
Amended	1502	3-4-11
32 KAR 1:190		
Amended	1504	3-4-11
32 KAR 2:130		
Amended	2256	6-3-11
101 KAR 1:325		
Amended	2666	7-21-11
101 KAR 2:095		
Amended	2669	(See 38 Ky.R.)
101 KAR 2:102		
Amended	2672	(See 38 Ky.R.)
101 KAR 3:015		
Amended	2677	(See 38 Ky.R.)
102 KAR 1:178	2303	6-3-11
103 KAR 3:010		
Amended	2258	
As Amended	2543	6-3-11
103 KAR 3:030		
Amended	2263	
As Amended	2547	6-3-11
103 KAR 3:040		
Amended	2273	
As Amended	2556	6-3-11
103 KAR 3:050		
Amended	760	7-1-11
103 KAR 15:195	2769	(See 38 Ky.R.)
201 KAR 3:015		
Repealed	3020	10-19-11
201 KAR 3:045		
Amended	2891	
201 KAR 3:080		
Repealed	3020	10-19-11
201 KAR 3:081*(r)*	3020	10-19-11
201 KAR 3:090	3021	(See 38 Ky.R.)
201 KAR 8:532	3022	(See 38 Ky.R.)
201 KAR 8:550	2308	
Amended	2876	8-5-11
201 KAR 8:560	626	Withdrawn
Withdrawn		2-8-11
201 KAR 8:562	3027	(See 38 Ky.R.)
201 KAR 12:083		
Amended	2282	
As Amended	2829	7-1-11
201 KAR 20:056		
Amended	2892	(See 38 Ky.R.)
201 KAR 20:059		
Amended	2046	6-3-11
201 KAR 20:062		
Amended	2895	8-17-11
201 KAR 20:070		
Amended	2900	8-17-11
201 KAR 20:110		
Amended	2902	8-17-11
201 KAR 20:215		
Amended	2905	8-17-11
201 KAR 20:225		
Amended	2907	8-17-11
201 KAR 20:240		

Regulation Number	37 Ky.R. Page No.	Effective Date
Amended	2909	8-17-11
201 KAR 20:310		
Amended	2911	8-17-11
201 KAR 20:411		
Amended	2913	8-17-11
201 KAR 20:470		(See 38 Ky.R.)
Amended	2915	8-17-11
201 KAR 26:115		
Amended	1511	
As Amended	1976	3-4-11
201 KAR 26:121		
Amended	1513	3-4-11
201 KAR 26:125		
Amended	1514	
As Amended	1977	3-4-11
201 KAR 26:130		
Amended	1516	
As Amended	1977	3-4-11
201 KAR 26:155		
Amended	1518	
As Amended	1978	3-4-11
201 KAR 26:171		
Amended	1520	
As Amended	1979	3-4-11
201 KAR 26:175		
Amended	1523	3-4-11
201 KAR 26:180		
Amended	1526	3-4-11
201 KAR 26:185		
Amended	1527	
As Amended	1982	3-4-11
201 KAR 26:190		
Amended	1529	
As Amended	1983	3-4-11
201 KAR 26:200		
Amended	1532	
As Amended	1984	3-4-11
201 KAR 26:215		
Amended	1533	3-4-11
201 KAR 26:230		
Amended	1535	
As Amended	1985	3-4-11
201 KAR 26:270		
Amended	1537	3-4-11
201 KAR 26:290		
Amended	1539	3-4-11
201 KAR 26:310	1597	
As Amended	1987	3-4-11
201 KAR 30:040		
Amended	101	10-1-11
201 KAR 39:010	2507	
Withdrawn		9-15-11
201 KAR 39:030		
Amended	2451	
Withdrawn		9-15-11
201 KAR 39:040		
Amended	2453	
Withdrawn		9-15-11
201 KAR 39:050		
Amended	2455	
Withdrawn		9-15-11
201 KAR 39:060		
Amended	2457	
Withdrawn		9-15-11
201 KAR 39:070		
Amended	2459	
Withdrawn		9-15-11
201 KAR 39:080		
Amended	2460	
Withdrawn		9-15-11
201 KAR 39:090		
Amended	2461	
Withdrawn		9-15-11
201 KAR 39:100		
Amended	2464	
Withdrawn		9-15-11
201 KAR 39:120		
Amended	2466	
Withdrawn		9-15-11
201 KAR 41:100	1112	
As Amended	1987	3-4-11
201 KAR 42:010		
Amended	1009	
Amended	1695	
As Amended	1988	3-4-11
201 KAR 42:020		
Amended	1011	
Amended	1696	
As Amended	1989	3-4-11
201 KAR 42:030		
Amended	1012	
As Amended	1989	3-4-11
201 KAR 42:035		
Amended	1013	
Amended	1697	
As Amended	1990	3-4-11
201 KAR 42:040		
Amended	1015	
Amended	1699	
As Amended	1991	3-4-11
201 KAR 42:050		
Amended	1016	
Amended	1700	
As Amended	1992	3-4-11
201 KAR 42:060		
Amended	1018	
Amended	1702	
As Amended	1993	3-4-11
201 KAR 42:070		
Amended	1020	
Amended	1704	
As Amended	1993	3-4-11
201 KAR 42:080	1113	
Amended	1705	
As Amended	1994	3-4-11
201 KAR 42:110		
Amended	1022	
As Amended	1996	3-4-11
201 KAR 43:010	3031	(See 38 Ky.R.)
201 KAR 43:020	3032	(See 38 Ky.R.)
201 KAR 43:030	3034	(See 38 Ky.R.)
201 KAR 43:040	3035	(See 38 Ky.R.)
301 KAR 1:152	2772	
Withdrawn		7-8-11
301 KAR 1:155		
Amended	2056	
Amended	2430	
As Amended	2565	6-3-11
301 KAR 2:049		
Amended	2283	6-3-11
301 KAR 2:095		
Amended	2682	8-4-11
301 KAR 2:178		
Amended	2065	
As Amended	2568	6-3-11
301 KAR 2:300		
Amended	2683	(See 38 Ky.R.)
400 KAR 2:090		
Amended	2920	(See 38 Ky.R.)
401 KAR 5:006		
Amended	1757	
Amended	2434	6-3-11

Regulation Number	37 Ky.R. Page No.	Effective Date
401 KAR 8:020		
Amendment	2924	(See 38 Ky.R.)
401 KAR 10:030		
Amended	2071	
Amended	2655	8-5-211
401 KAR 42:005		
Amended	2686	(See 38 Ky.R.)
401 KAR 42:011		
Amended	2691	(See 38 Ky.R.)
401 KAR 42:020		
Amended	2693	(See 38 Ky.R.)
401 KAR 42:030		
Amended	2696	(See 38 Ky.R.)
401 KAR 42:040		
Amended	2700	(See 38 Ky.R.)
401 KAR 42:045	2773	(See 38 Ky.R.)
401 KAR 42:050		
Amended	2702	(See 38 Ky.R.)
401 KAR 42:060		
Amended	2704	(See 38 Ky.R.)
401 KAR 42:070		
Amended	2706	(See 38 Ky.R.)
401 KAR 42:080		
Amended	2709	(See 38 Ky.R.)
401 KAR 42:090		
Amended	2711	(See 38 Ky.R.)
401 KAR 42:095	2775	(See 38 Ky.R.)
401 KAR 42:200		
Amended	2713	(See 38 Ky.R.)
401 KAR 42:250		
Amended	2715	(See 38 Ky.R.)
401 KAR 42:290		
Amended	2726	(See 38 Ky.R.)
401 KAR 42:300		
Amended	2729	(See 38 Ky.R.)
401 KAR 42:314		
Repealed	2777	10-6-11
401 KAR 42:315	2777	10-6-11
401 KAR 42:316		
Amended	2731	(See 38 Ky.R.)
401 KAR 42:320		
Amended	2733	(See 38 Ky.R.)
401 KAR 42:330		
Amended	2735	(See 38 Ky.R.)
401 KAR 42:335		
Amended	2738	(See 38 Ky.R.)
401 KAR 42:340		
Amended	2739	(See 38 Ky.R.)
401 KAR 47:205	2778	(See 38 Ky.R.)
401 KAR 47:207	2781	(See 38 Ky.R.)
401 KAR 48:205	2784	(See 38 Ky.R.)
401 KAR 48:206	2788	(See 38 Ky.R.)
401 KAR 48:207	2792	(See 38 Ky.R.)
401 KAR 48:208	2795	(See 38 Ky.R.)
401 KAR 49:080		
Amended	1349	
Amended	1707	3-4-11
401 KAR 51:052		
Amended	2470	8-4-11
500 KAR 8:010		
Amendment	2927	(See 38 Ky.R.)
501 KAR 2:020		
Amendment	2929	(See 38 Ky.R.)
501 KAR 2:040		
Amendment	2930	10-7-11
501 KAR 2:050		
Amendment	2932	10-7-11
501 KAR 2:060		
Amendment	2933	(See 38 Ky.R.)
501 KAR 2:070		
Amendment	2935	10-7-11
501 KAR 3:010		
Amendment	2936	(See 38 Ky.R.)
501 KAR 3:020		
Amendment	2938	(See 38 Ky.R.)
501 KAR 3:030		
Amendment	2940	(See 38 Ky.R.)
501 KAR 3:040		
Amendment	2942	(See 38 Ky.R.)
501 KAR 3:050		
Amendment	2943	(See 38 Ky.R.)
501 KAR 3:060		
Amendment	2949	(See 38 Ky.R.)
501 KAR 3:070		
Amendment	2951	(See 38 Ky.R.)
501 KAR 3:080		
Amendment	2952	(See 38 Ky.R.)
501 KAR 3:090		
Amendment	2954	(See 38 Ky.R.)
501 KAR 3:100		
Amendment	2956	(See 38 Ky.R.)
501 KAR 3:110		
Amendment	2958	(See 38 Ky.R.)
501 KAR 3:120		
Amendment	2959	(See 38 Ky.R.)
501 KAR 3:130		
Amendment	2961	(See 38 Ky.R.)
501 KAR 3:140		
Amendment	2964	(See 38 Ky.R.)
501 KAR 3:150		
Amendment	2966	(See 38 Ky.R.)
501 KAR 3:160	3038	(See 38 Ky.R.)
501 KAR 3:170	3040	(See 38 Ky.R.)
501 KAR 7:010		
Amended	2969	(See 38 Ky.R.)
501 KAR 7:020		
Amended	2970	(See 38 Ky.R.)
501 KAR 7:030		
Amended	2972	(See 38 Ky.R.)
501 KAR 7:040		
Amended	2973	(See 38 Ky.R.)
501 KAR 7:050		
Amended	2975	(See 38 Ky.R.)
501 KAR 7:060		
Amended	2978	(See 38 Ky.R.)
501 KAR 7:070		
Amended	2979	(See 38 Ky.R.)
501 KAR 7:080		
Amended	2981	(See 38 Ky.R.)
501 KAR 7:090		
Amended	2982	(See 38 Ky.R.)
501 KAR 7:100		
Amended	2984	10-7-11
501 KAR 7:110		
Amended	2985	(See 38 Ky.R.)
501 KAR 7:120		
Amended	2987	(See 38 Ky.R.)
501 KAR 7:130		
Amended	2989	(See 38 Ky.R.)
501 KAR 7:140		
Amended	2990	(See 38 Ky.R.)
501 KAR 7:150	3041	(See 38 Ky.R.)
501 KAR 13:010		
Amended	2992	(See 38 Ky.R.)
502 KAR 12:010		
Amended	1546	
As Amended	1997	3-4-11
505 KAR 1:130		
Amended	2289	
Amended	2881	8-5-2011
601 KAR 1:018		
Amended	808	

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As Amended	2000	2-9-11
603 KAR 4:035		
Amended	2741	
Withdrawn		7-13-11
702 KAR 7:125		
Amended	2291	
As Amended	2572	6-3-11
703 KAR 5:200	3042	(See 38 Ky.R.)
787 KAR 1:070		
Amended	2994	9-2-11
787 KAR 1:090		
Amended	2996	(See 38 Ky.R.)
787 KAR 1:210		
Amended	2898	(See 38 Ky.R.)
787 KAR 2:020		
Amended	1551	3-4-11
803 KAR 25:089		
Amended	1078	
Amended	1492	3-4-11
803 KAR 25:091		
Amended	1080	
As Amended	2005	3-4-11
806 KAR 2:150	1938	
Amended	2438	6-3-11
806 KAR 3:170		
Amended	2746	(See 38 Ky.R.)
806 KAR 9:220		
Amended	1554	3-4-11
806 KAR 12:120		
Amended	2754	(See 38 Ky.R.)
806 KAR 13:120		
Amended	1557	
As Amended	2007	3-4-11
806 KAR 44:010	1603	
As Amended	2010	3-4-11
808 KAR 10:010		
Amended	2482	
As Amended	2836	7-1-11
808 KAR 10:030		
Amended	2484	
As Amended	2837	7-1-11
808 KAR 10:050		
Amended	2487	
As Amended	2839	7-1-11
808 KAR 10:200		
Amended	2488	
As Amended	2839	7-1-11
808 KAR 10:240		
Amended	2492	
As Amended	2842	7-1-11
808 KAR 10:260		
Amended	2493	
As Amended	2842	7-1-11
808 KAR 10:280		
Amended	2494	
As Amended	2843	7-1-11
808 KAR 10:410		
Amended	2498	
As Amended	2845	7-1-11
808 KAR 10:440		
Amended	2500	
As Amended	2847	7-1-11
808 KAR 10:450		
Amended	2503	
As Amended	2849	7-1-11
808 KAR 10:480	2509	
As Amended	2850	7-1-11
808 KAR 10:490	2511	
As Amended	2851	7-1-11
810 KAR 1:001		
Amended	825	
As Amended	2852	7-1-11
810 KAR 1:011		
Amended	828	
As Amended	2855	7-1-11
810 KAR 1:120	895	
As Amended	2859	7-1-11
811 KAR 1:005		
Amended	834	
As Amended	2860	
Reprint		(See 38 Ky.R.)
811 KAR 1:125		
Amended	837	
As Amended	2862	7-1-11
811 KAR 1:240	1130	
Amended	1720	
As Amended	2013	3-4-11
811 KAR 1:250	898	
As Amended	2871	7-1-11
811 KAR 1:280	2318	
As Amended	2575	6-3-11
811 KAR 2:010		
Amended	847	
As Amended	2872	
Reprint		(See 38 Ky.R.)
811 KAR 2:060		
Amended	851	7-1-11
811 KAR 2:150	1136	
Amended	1723	
As Amended	2015	3-4-11
811 KAR 2:160	900	7-1-11
811 KAR 2:180	2328	
As Amended	2584	6-3-11
811 KAR 2:190	2338	
Amended	2883	(See 38 Ky.R.)
815 KAR 7:120		
Amended	1092	
Amended	1727	3-4-11
815 KAR 7:125		
Amended	1095	
Amended	1729	3-4-11
815 KAR 10:070	3045	(See 38 Ky.R.)
815 KAR 20:030		
Amended	275	(See 38 Ky.R.)
815 KAR 20:034		
Amended	1568	
As Amended	2017	3-4-11
815 KAR 20:070		
Amended	2759	8-5-11
815 KAR 35:060		
Amended	3000	(See 38 Ky.R.)
815 KAR 35:100		
Amended	3002	(See 38 Ky.R.)
900 KAR 5:020		
Amended	3005	10-19-11
900 KAR 6:030		
Amended	2762	(See 38 Ky.R.)
900 KAR 7:030		
Amended	2763	(See 38 Ky.R.)
902 KAR 8:160		
Amended	3006	(See 38 Ky.R.)
902 KAR 8:165		
Amended	3010	(See 38 Ky.R.)
902 KAR 8:170		
Amended	3012	(See 38 Ky.R.)
902 KAR 20:410	1142	
Amended	1731	
As Amended	2019	3-4-11
902 KAR 100:010		
Amended	1799	
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902 KAR 100:021		

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902 KAR 100:058		
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902 KAR 100:070		
Amended	1827	
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902 KAR 100:072		
Amended	1837	
As Amended	2627	6-3-11
902 KAR 100:165		
Amended	1863	
As Amended	2651	6-3-11
907 KAR 1:014		
Amended	551	
As Amended	984	11-5-10
907 KAR 1:715		
Amended	2298	
Amended	2886	(See 38 Ky.R.)
908 KAR 3:050		
Amended	1358	
As Amended	2022	3-4-11
922 KAR 1:420		
Amended	2092	
Withdrawn		12-2-11

SYMBOL KEY:
* Statement of Consideration not filed by deadline
** Withdrawn, not in effect within 1 year of publication
*** Withdrawn before being printed in Register
(r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation

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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.)

32 KAR 1:050E	206	7-1-11
Replaced	294	11-4-11
32 KAR 1:070E	207	7-1-11
Replaced	736	11-4-11
101 KAR 2:095E		(See 37 Ky.R.)
Replaced	482	9-28-11
101 KAR 2:102E		(See 37 Ky.R.)
Replaced	484	9-28-11
101 KAR 2:180E	1420	1-3-12
Replaced	1116	1-6-12
101 KAR 2:210E	731	9-15-11
Replaced	1116	1-6-12
101 KAR 3:015E		(See 37 Ky.R.)
Replaced	488	9-28-11
103 KAR 3:040E	1278	12-9-11
Replaced	1538	4-6-12
103 KAR 31:170E	1934	5-11-12
103 KAR 15:195E		(See 37 Ky.R.)
Replaced	13	8-5-11
201 KAR 8:532E		(See 37 Ky.R.)
Replaced	501	9-13-11
201 KAR 8:562E		(See 37 Ky.R.)
Replaced	504	9-13-11
201 KAR 11:225E	1535	2-14-12
201 KAR 30:310E	209	7-15-11
Replaced	1298	2-3-12
201 KAR 30:320E	210	7-15-11
Replaced	1298	2-3-12
201 KAR 30:330E	211	7-15-11
Replaced	1299	2-3-12
201 KAR 43:010E		(See 37 Ky.R.)
Expired		11-26-11
301 KAR 2:221E	874	9-20-11
Replaced	1044	2-3-12
301 KAR 2:222E	876	9-20-11
Replaced	1046	2-3-12
301 KAR 2:225E	732	8-18-11
Replaced	821	1-6-12
302 KAR 20:052E	1088	11-10-11
Replaced	1562	4-6-12
302 KAR 29:061E	11	6-3-11
Expired		11-30-11
302 KAR 45:010E	456	8-2-11
Replaced	903	11-3-11
405 KAR 10:011E *r*	1935	5-4-12
405 KAR 10:015E	1937	5-4-12
501 KAR 6:250E	1423	12-16-11
Replaced	1732	5-4-11
501 KAR 6:270E	1426	12-16-11
Replaced	1735	5-4-11
815 KAR 4:010E	212	7-8-11
Replaced	914	11-30-11
815 KAR 4:025E	215	7-8-11
Replaced	915	11-30-11
815 KAR 4:030E	217	7-8-11
Replaced	916	11-30-11
815 KAR 4:040E	219	7-8-11
Replaced	917	11-30-11
815 KAR 4:050E	221	7-8-11
Replaced	918	11-30-11
815 KAR 4:060E	223	7-8-11
Replaced	919	11-30-11
815 KAR 4:070E	225	7-8-11
Replaced	444	11-30-11
815 KAR 10:070E		(See 37 Ky.R.)
Replaced	241	8-17-11
900 KAR 7:030E	1089	10-28-11
Replaced	1236	3-21-12
902 KAR 15:020E	227	6-30-11
Replaced	924	11-10-11
907 KAR 1:018E	880	10-3-11
Replaced	1451	3-2-12
907 KAR 1:595E	459	7-21-11
Replaced	968	12-2-11
907 KAR 17:005E	1093	10-28-11
Replaced	1738	5-4-11
921 KAR 2:015E	1429	12-29-11
921 KAR 3:090E	232	6-30-11
Replaced	416	10-19-11

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11 KAR 3:100		
Amended	49	
As Amended	464	10-7-11
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11 KAR 4:080		
Amended	1610	
As Amended	1943	
11 KAR 5:145		
Amended	1611	
11 KAR 15:090		

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Amended	64	
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13 KAR 2:020		
Amended	804	
Amended	1163	
As Amended	1288	2-3-12
13 KAR 2:110	1243	
As Amended	1435	3-2-12
16 KAR 2:010		
Amended	68	
As Amended	479	10-7-11
16 KAR 2:040		
Amended	635	
As Amended	885	11-14-11
16 KAR 4:030		
Amended	1763	
As Amended	1943	
16 KAR 4:060		
Amended	71	
As Amended	481	10-7-11
16 KAR 5:020		
Amended	1169	
As Amended	1537	4-6-12
16 KAR 5:040		
Amended	637	
As Amended	887	11-14-11
16 KAR 6:010		
Amended	1457	
As Amended	1697	5-4-12
16 KAR 6:030		(See 37 Ky.R.)
As Amended	13	7-11-11
16 KAR 9:090	705	
As Amended	889	11-14-11
17 KAR 3:020		
Amended	1460	5-4-12
31 KAR 3:020	1245	
As Amended	1436	3-2-12
32 KAR 1:050		
Amended	294	11-4-11
32 KAR 1:070		
Amended	295	
As Amended	736	11-4-11
101 KAR 1:335		
Amended	809	
As Amended	1115	1-6-12
101 KAR 1:365		
Amended	1011	
Withdrawn		11-2-11
101 KAR 1:375		
Amended	641	
As Amended	890	11-16-11
101 KAR 2:046		
Amended	643	
As Amended	891	11-16-11
101 KAR 2:056		
Amended	645	
As Amended	892	11-16-11
101 KAR 2:095		(See 37 Ky.R.)
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101 KAR 2:102		(See 37 Ky.R.)
As Amended	484	9-28-11
Amended	1171	
101 KAR 2:105		
Amended	646	
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101 KAR 2:106		
Amended	648	
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101 KAR 2:140		
Amended	1176	
As Amended		
101 KAR 2:180		
Amended	650	
Withdrawn		12-1-11
Amended	1462	
As Amended	1699	5-4-12
101 KAR 2:210		
Amended	812	
As Amended	1116	1-6-12
101 KAR 3:015		(See 37 Ky.R.)
As Amended	488	9-28-11
Amended	1178	
103 KAR 3:010		
Amended	1613	
As Amended	1821	
103 KAR 3:020		
Amended	1013	
As Amended	1293	2-3-12
103 KAR 3:030		
Amended	1618	
As Amended	1825	
103 KAR 3:040		
Amended	1349	
As Amended	1538	4-6-12
103 KAR 8:010		
Amended	73	
As Amended	1297	
103 KAR 15:195		(See 37 Ky.R.)
As Amended	13	8-5-11
103 KAR 31:170	2107	
105 KAR 1:140		
Amended	74	
As Amended	492	9-28-11
105 KAR 1:190		
Amended	77	
As Amended	494	9-28-11
105 KAR 1:440		
Amended	813	1-6-12
106 KAR 2:030	2108	
200 KAR 21:010		
Amended	84	
As Amended	500	9-28-11
200 KAR 21:030		
Repealed	166	9-28-11
200 KAR 21:031	166	9-28-11
201 KAR 1:081		
Amended	1465	
As Amended	1834	
201 KAR 1:160		
Amended	814	
As Amended	1117	1-6-12
201 KAR 2:170		
Amended	652	
As Amended	1297	1-18-12
201 KAR 3:045		
As Amended	736	11-4-11
201 KAR 3:090		(See 37 Ky.R.)
As Amended	737	11-4-11
201 KAR 5:110	167	
Amended	621	
Reprint	872	11-4-11
201 KAR 8:532		(See 37 Ky.R.)
As Amended	501	9-13-11
201 KAR 8:562		(See 37 Ky.R.)
As Amended	504	9-13-11
Amended	1870	
201 KAR 9:090		
Repealed	419	10-19-11
201 KAR 9:091*(r)*	419	10-19-11
201 KAR 11:225	1670	
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201 KAR 13:040		

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201 KAR 14:015		
Amended	86	
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201 KAR 14:180		
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201 KAR 17:011		
Amended	1628	
As Amended	1836	
201 KAR 17:012		
Amended	1630	
As Amended	1837	
201 KAR 17:032		
Amended	1632	
As Amended	1837	
201 KAR 17:034		
Amended	1633	
As Amended	1838	
201 KAR 17:036		
Amended	1635	
As Amended	1839	
201 KAR 18:040		
Amended	1636	
As Amended	1840	
201 KAR 18:192		
Amended	654	
As Amended	894	12-2-11
201 KAR 18:220		
Amended	1991	
201 KAR 20:056		(See 37 Ky.R.)
As Amended	235	8-17-11
Amended	1358	
As Amended	1547	3-21-12
201 KAR 20:057		
Amended	1361	
As Amended	1549	3-21-12
201 KAR 20:085		
Amended	1185	
As Amended	1437	2-15-12
201 KAR 20:161		
Amended	297	10-19-11
201 KAR 20:260		
Amended	1186	
As Amended	1437	2-15-12
201 KAR 20:340		
Amended	1189	
As Amended	1439	2-15-12
201 KAR 20:370		
Amended	299	10-19-11
201 KAR 20:410		
Amended	1190	
As Amended	1440	2-15-12
201 KAR 20:450		
Amended	1994	
201 KAR 20:470		(See 37 Ky.R.)
As Amended	237	
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201 KAR 20:490		
Amended	1764	
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201 KAR 20:510		
Amended	1997	
201 KAR 22:001		
Amended	1998	
201 KAR 22:020		
Amended	87	
Withdrawn		8-12-11
Amended	657	
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201 KAR 22:045		
Amended	89	10-19-11
Amended	1638	
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201 KAR 22:053		
Amended	91	10-19-11
Amended	1467	
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201 KAR 22:070		
Amended	1365	
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201 KAR 23:015		
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201 KAR 23:050		
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201 KAR 23:075		
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201 KAR 23:130		
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201 KAR 27:011		
Amended	1191	
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201 KAR 27:012		
Amended	1197	
Amended	1574	
As Amended	1708	5-4-12
201 KAR 27:016		
Amended	1200	
Amended	1576	
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201 KAR 27:017		
Amended	1205	
As Amended	1715	5-4-12
201 KAR 27:035		
Amended	1208	
As Amended	1717	5-4-12
201 KAR 27:055		
Amended	1209	
As Amended	1717	5-4-12
201 KAR 27:100		
Amended	1211	
Amended	1582	
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201 KAR 29:050		
Amended	300	
Amended	787	
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201 KAR 30:040		
Amended	1469	
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201 KAR 30:050		
Amended	1768	
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201 KAR 30:310	420	
Amended	989	
As Amended	1298	2-3-12
201 KAR 30:320	421	
As Amended	1298	2-3-12
201 KAR 30:330	422	
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201 KAR 30:360	423	
Amended	990	
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201 KAR 30:370	425	
Withdrawn		8-3-11
201 KAR 30:375	1069	
Amended	1455	
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201 KAR 32:025		
Amended	1370	
As Amended	1554	3-21-12
201 KAR 32:035		
Amended	1372	
As Amended	1555	3-21-12
Amended	1877	
201 KAR 32:045		
Amended	1374	
As Amended	1556	3-21-12
201 KAR 32:050		
Amended	1375	3-21-12
201 KAR 32:060		
Amended	1378	
As Amended	1557	3-21-12
201 KAR 36:060		
Amended	1018	
As Amended	1558	3-21-12
201 KAR 36:070		
Amended	1021	
As Amended	1560	3-21-12
201 KAR 37:010		
Amended	1471	
Withdrawn		3-7-12
201 KAR 39:001	1671	
As Amended	1842	
201 KAR 39:011	1070	
Withdrawn		1-13-12
201 KAR 39:030		
Amended	1022	
Withdrawn		1-13-12
Amended	1641	
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201 KAR 39:040		
Amended	1024	
Withdrawn		1-13-12
Amended	1643	
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201 KAR 39:050		
Amended	1026	
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Amended	1645	
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201 KAR 39:060		
Amended	1028	
Withdrawn		1-13-12
Amended	1647	
As Amended	1849	
201 KAR 39:070		
Amended	1030	
Withdrawn		1-13-12
Amended	1648	
As Amended	1849	
201 KAR 39:080		
Amended	1031	
Withdrawn		1-13-12
Amended	1650	
As Amended	1850	
201 KAR 39:090		
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201 KAR 39:100		
Amended	1035	
Withdrawn		1-13-12
Amended	1654	
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201 KAR 42:035		
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201 KAR 43:030		(See 37 Ky.R.)
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201 KAR 44:070	1514	
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202 KAR 7:601		
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301 KAR 1:058		
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301 KAR 1:152	434	10-6-11
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301 KAR 1:201		
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SYMBOL KEY:

* Statement of Consideration not filed by deadline

** Withdrawn, not in effect within 1 year of publication

*** Withdrawn before being printed in Register

(r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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210	603 KAR 7:080
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