ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

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The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, July 15, 2012.

ARRS – August 14, 2012 TENTATIVE AGENDA.....179
REGULATION REVIEW PROCEDURE 181

EMERGENCIES
Cabinet for Health and Family Services.....182

AS AMENDED
Kentucky Higher Education Assistance Authority.....187
Department of Military Affairs.....199
Board of Dentistry.....199
Board of Nursing.....203
Department of Fish and Wildlife.....205
Department of Corrections.....209
Department of Workplace Standards.....212

AMENDED AFTER COMMENTS
NONE

PROPOSED AMENDMENTS
Board of Nursing.....257
Kentucky Economic Development and Finance Authority.....262
Division of Water.....265
Public Service Commission.....275
Department of Housing, Buildings and Construction.....325
Cabinet for Health and Family Services.....327

NEW ADMINISTRATIVE REGULATIONS
Office of Consumer Protection.....350
Board of Prosthetics, Oththotics, and Pedorthics.....353
Kentucky Economic Development and Finance Authority.....358
Justice and Public Safety Cabinet.....362
Department of Housing, Buildings and Construction.....363
Cabinet for Health and Family Services.....365

ARRS Report.....369
OTHER COMMITTEE REPORTS.....374

CUMULATIVE SUPPLEMENT
Locator Index - Effective Dates.....**B - 2**
KRS Index.....**B - 5**
Technical Amendments.....**B - 8**
Subject Index.....**B - 9**

MEETING NOTICE: ARRS

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet August 14, 2012 at 1:00 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages **179-180** 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, August 14, 2012 in room 154, Capitol Annex, Frankfort, Kentucky.

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 2012 Edition of **KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE**.

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

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

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TENTATIVE AGENDA, AUGUST 14, 2012, at 1:00 p.m., Room 149 Capitol Annex

EDUCATION PROFESSIONAL STANDARDS BOARD

Teaching Certificates

16 KAR 2:120. Emergency certification and out-of-field teaching.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Sales and Excise Taxes

Sales and Use Tax; Administration and Accounting

103 KAR 31:170 & E. Disaster area relief sales and use tax refunds. ("E" expires 11/7/2012) (Deferred from July)

Kentucky Retirement Systems

General Rules

105 KAR 1:400 & E. Federal taxation limitation year. ("E" expires 11/25/2012)
105 KAR 1:420. 401(h) account established under 26 USC 401(h).
105 KAR 1:430. General compliance with federal tax laws.

GENERAL GOVERNMENT CABINET
Board of Pharmacy

Board

201 KAR 2:340. Special pharmacy permit for clinical practice.

Board of Physical Therapy

Board

201 KAR 22:001. Definitions for 201 KAR Chapter 22.
201 KAR 22:040. Procedure for renewal or reinstatement of a credential for a physical therapist or a physical therapist assistant.
201 KAR 22:045. Continued competency requirements and procedures.
201 KAR 22:053. Code of ethical standards and standards of practice for physical therapists and physical therapist assistants.

Kentucky Real Estate Appraisers Board

Board

201 KAR 30:030. Types of appraisers required in federally-related transactions; certification and licensure.
201 KAR 30:125. Continuing education for appraisers.
201 KAR 30:180. Distance education standards.
201 KAR 30:190. Educational requirements for certification.

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM
Kentucky Board of Emergency Medical Services

Board

202 KAR 7:601. Training, education, and continuing education. (Amended After Comments) (Deferred from July)

GENERAL GOVERNMENT CABINET
Department of Agriculture
Division of Regulation and Inspection

Amusement Rides

302 KAR 16:091. Rides and attractions not included in the definition of amusement ride or attraction.

Office of Consumer and Environmental Protection
Division of Environmental Services

Agricultural Pest Control

302 KAR 27:050. Certification.

Ornamental Turf Lawn and Interior Plantscape Pest Control

302 KAR 28:020. General provisions.
302 KAR 28:050. Certification.

Structural Pest Control

302 KAR 29:020. General provisions.
302 KAR 29:050. Commercial structural pest control and fumigation.
302 KAR 29:060. Certification.

TOURISM, ARTS AND HERITAGE CABINET
Department of Parks

Parks and Campgrounds

304 KAR 1:040. Campgrounds. (Deferred from July)
304 KAR 1:080. Kentucky Proud ™ Promotion Program. (Deferred from July)

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

Attainment and Maintenance of the National Ambient Air Quality Standards

401 KAR 51:001. Definitions for 401 KAR Chapter 51.
401 KAR 51:017. Prevention of significant deterioration of air quality.
401 KAR 51:052. Review of new sources in or impacting upon nonattainment areas.

Department for Natural Resources
Division of Mine Permits

Bond and Insurance Requirements
405 KAR 10:011E. Repeal of 405 KAR 10:010 and 405 KAR 10:020. ("E" expires 10/31/2012) (Deferred from July)
405 KAR 10:015 & E. General bonding provisions. ("E" expires 10/31/2012) (Comments Received)
405 KAR 10:030. General requirements for liability insurance. (Comments Received)

Performance Standards for Surface Mining Activities
405 KAR 16:020. Contemporaneous reclamation. (Comments Received)

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections

Office of the Secretary
501 KAR 6:130.Western Kentucky Correctional Complex.
501 KAR 6:140. Bell County Forestry Camp.

Kentucky State Police

Driver Training
502 KAR 10:120 & E. Hazardous materials endorsement requirements. ("E" expires 11/26/2012)

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing

Plumbing
815 KAR 20:020. Parts or materials list.
815 KAR 20:191. Minimum fixture requirements.

Division of Building Codes Enforcement

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Aging and Independent Living
Division of Quality Living

Aging Services
910 KAR 1:190. Nutrition program for older persons.

REMOVED FROM AUGUST 2012 AGENDA

CABINET FOR HEALTH AND FAMILY SERVICES
Governor's Office of Electronic Health Information

Kentucky Health Information Exchange
900 KAR 9:010. Kentucky health information exchange participation. (Comments Received, SOC ext.)

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

Filing and Publication

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

Public Hearing and Public Comment Period

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

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

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

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

Review Procedure

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

STATEMENT OF EMERGENCY
906 KAR 1:160E

This emergency administrative regulation is being promulgated to comply with 2012 (Regular Session) Ky. Acts ch. 122 (2012 SB 3), which decreased the monthly over-the-counter purchase limit of ephedrine and pseudoephedrine in pill or tablet form from nine (9) grams to seven and one-fifth (7.2) grams within a thirty (30) day period and imposed a twenty-four (24) gram yearly limit. Additionally, 2012 (Regular Session) Ky. Acts ch. 122 replaces the paper-tracking system currently in place for the purchase of medicines containing ephedrine and pseudoephedrine with a mandatory electronic system that will allow more real-time tracking. This action must be taken on an emergency basis in accordance with KRS 13A.190(1)(a) to meet a deadline for the promulgation of an administrative regulation that is established by state law. Failure to enact this administrative regulation on an emergency basis in accordance with KRS 13A.190(1)(a) compromises the Cabinet for Health and Family Services and Justice Cabinet's ability to update this administrative regulation for compliance with 2012 (Regular Session) Ky. Acts ch. 122 (2012 SB 3) on the date that the Act becomes effective as law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation to be concurrently filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
AUDREY TAYSE HAYNES, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Audits and Investigations
(Emergency Amendment)

906 KAR 1:160E. Monitoring system for products containing ephedrine, pseudoephedrine, or phenylpropanolamine.

RELATES TO: KRS 15.380, 218A.1446, 218A.240
STATUTORY AUTHORITY: KRS [~~194A.050(1),~~] 218A.1446
EFFECTIVE: July 13, 2012
NECESSITY, FUNCTION, AND CONFORMITY: [~~KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs.~~] KRS 218A.1446 authorizes the Cabinet for Health and Family Services and the Office of Drug Control Policy to establish an electronic recordkeeping mechanism for monitoring the sale of any nonprescription compound, mixture, or preparation containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers. [~~KRS 218A.1446(3) states that pursuant to administrative regulations promulgated by the Drug Enforcement and Professional Practices Branch and the Office of Drug Control Policy (ODCP), pharmacies requesting an exemption to electronic reporting may file an exemption request to the Branch and ODCP.~~] This administrative regulation establishes the Kentucky Electronic Methamphetamine Precursor Tracking (KEMPT) system[~~, and establishes the requirements for an exemption from electronic reporting~~].

Section 1. Definitions. (1) "Attempted purchase" means information regarding a transaction is entered into the KEMPT system by a dispenser of a precursor to methamphetamine and the sale is not completed because the system recommends that the transaction be denied pursuant to KRS 218A.1446(5) or (6).

(2) [~~"Branch" means the Drug Enforcement and Professional Practices Branch within the Division of Audits and Investigations, Office of the Inspector General, Cabinet for Health and Family Services.~~

~~(3)~~] "Cabinet" is defined by KRS 218A.010(3).

(3) [~~(4)~~] "Dispenser of a precursor to methamphetamine" means a registered pharmacist, pharmacy intern, or pharmacy technician who lawfully sells [~~dispenses~~] a nonprescription compound, mixture, or preparation containing a detectable quantity of ephedrine, pseudoephedrine, phenylpropanolamine, their salts or optical isomers, or salts of optical isomers.

(4) [~~(5)~~] "Kentucky Electronic Methamphetamine Precursor Tracking" or "KEMPT" means the electronic recordkeeping mechanism used [~~contracted for~~] by the Office of Drug Control Policy to monitor the sale of a nonprescription compound, mixture, or preparation containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers.

(5) [~~(6)~~] "Law enforcement officer" means a:

(a) Drug enforcement agent designated by the Cabinet for Health and Family Services pursuant to KRS 218A.240(2);

(b) Kentucky peace officer certified pursuant to KRS 15.380 as a:

1. Kentucky State Police officer;
2. City, county, or urban-county police officer;
3. Deputy sheriff; or
4. State or public university safety and security officer;

(c) Certified or full-time peace officer of another state; or

(d) Federal peace officer.

(6) [~~(7)~~] "ODCP" means the Office of Drug Control Policy within the Kentucky Justice and Public Safety Cabinet.

(7) [~~(8)~~] "Precursor to methamphetamine" means a nonprescription compound, mixture, or preparation containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers.

(8) [~~(9)~~] "Purchaser" means an individual age eighteen (18) or older who purchases, or attempts to purchase, a nonprescription compound, mixture, or preparation containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers.

Section 2. Electronic Reporting. (1) [~~Unless granted an exemption pursuant to Section 3(5) of this administrative regulation or using an alternative electronic reporting mechanism approved pursuant to KRS 218A.1446(2)(b),~~] The following information shall be entered in the KEMPT system upon the purchase, or attempted purchase, of a precursor to methamphetamine:

(a) Date of transaction pursuant to KRS 218A.1446(2)(b), which is entered manually or recorded automatically by KEMPT;

(b) Identifying information regarding the purchaser pursuant to KRS 218A.1446(2)(b) and a government-issued photo identification number; and

(c) Amount and name of the product dispensed pursuant to KRS 218A.1446(2)(b).

(2) The ODCP[~~cabinet~~] shall be solely responsible for the security of the transaction information required by subsection (1) of this section after a dispenser of a precursor to methamphetamine transmits the information.

(3) The ODCP[~~cabinet~~] shall provide a toll-free telephone number:

(a) For technical support available to a dispenser of a precursor to methamphetamine twenty-four (24) hours per day, seven (7) days per week; and

(b) For customer service available to a purchaser who has an inquiry regarding a transaction, Monday through Friday, 8 a.m. to 4:30 p.m., except for state recognized holidays.

(4) A pharmacy may use a hardcopy signature logbook consisting of each purchaser's signature and transaction number to meet the requirement for obtaining electronic signatures. [~~A pharmacy that uses the KEMPT system shall be exempt from maintaining a written log of the information required by KRS 218A.1446(2)(b).~~

~~(5) A pharmacy that is not able to secure an electronic signature shall maintain a hardcopy signature logbook consisting of each purchaser's signature and transaction number.~~]

Section 3. Extension for Reporting Information and Exemption from Electronic Reporting. (1) If a dispenser of a precursor to methamphetamine experiences mechanical or electronic failure,

the ODCP [~~cabinet~~] shall grant an extension for reporting the information required by Section 2(1) of this administrative regulation.

(2) To request an extension for reporting information required by Section 2(1) of this administrative regulation, a dispenser of a precursor to methamphetamine shall submit a request to the ODCP [~~cabinet~~] that:

(a) States the reason for the request;

(b) Identifies the period of time for which the extension is necessary, not to exceed seventy-two (72) hours; and

(c) Is submitted:

1. Within twenty-four (24) hours of discovery of the circumstances resulting in the need for an extension request; or

2. On the day following a holiday or weekend if the discovery occurs on a day that ODCP[~~cabinet~~] offices are closed.

(3) If a transaction occurs during the time period in which a request described in subsection (2) of this section is pending, a dispenser of a precursor to methamphetamine shall:

(a) Maintain a written log or [~~an alternative~~] electronic recordkeeping mechanism approved pursuant to KRS 218A.1446(2)(b) of the information required by Section 2(1) of this administrative regulation; and

(b) Enter the information in the KEMPT system within seventy-two (72) hours of the system becoming operational.

(4) The ODCP[~~cabinet~~] shall acknowledge receipt of a request described in subsection (2) of this section within:

(a) Twenty-four (24) hours or receipt; or

(b) On the day following a holiday or weekend if ODCP[~~cabinet~~] offices are closed. [~~(5) An exemption from the electronic reporting requirement described in Section 2 of this administrative regulation shall be granted upon receipt by the branch and ODCP of a pharmacy's written request for exemption if the request complies with KRS 218A.1446(3)(c).~~]

Section 4. Request for KEMPT Reports. (1) The ODCP [~~cabinet~~] shall provide a KEMPT report:

(a) To a law enforcement officer whose duty is to enforce the laws of this state, another state, or of the United States relating to drugs;

(b) To a pharmacy;

(c) Pursuant to a subpoena issued by a grand jury; or

(d) Pursuant to a court order issued by a criminal court.

(2) The ODCP[~~cabinet~~] shall not provide a KEMPT report to a person or entity that is not authorized in accordance with subsection (1) of this section to receive the report.

(3) [~~A law enforcement officer or pharmacy may submit an electronic request for a KEMPT report at the following Web site: http://chfs.ky.gov/kempt.~~

~~(4)~~] A KEMPT report provided to a pharmacy shall not identify the dispenser of a precursor to methamphetamine or the dispensing pharmacy.

Section 5. Denial of Transactions and Overrides. (1) If an individual attempts to purchase a precursor to methamphetamine in violation of the thirty (30) day or one (1) year restrictions [~~nine (9) gram restriction~~] established by KRS 218A.1446(5), or the age restriction established by KRS 218A.1446(6), the KEMPT system shall:

(a) Notify the pharmacy at the time of sale; and

(b) Recommend that the pharmacy deny the transaction.

(2) The KEMPT system shall provide an override feature for use by a dispenser of a precursor of methamphetamine to allow completion of the sale.

Section 6. Compliance Date. [~~Unless granted an exemption pursuant to Section 3(5) of this administrative regulation or using an alternative electronic reporting mechanism approved pursuant to KRS 218A.1446(2)(b),~~] All pharmacies that dispense precursors to methamphetamine shall:

(1) Comply with the electronic reporting requirements of Section 2 of this administration regulation within (30) days of the date that a pharmacy has access to KEMPT; or

(2) Submit a request to [~~the branch and~~] ODCP for an extension if the pharmacy is not able to comply with the electronic reporting requirements on the date the pharmacy has access to KEMPT.

MARY REINLE BEGLEY, Inspector General
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 13, 2012

FILED WITH LRC: July 13, 2012 at 11 a.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person(s): Van Ingram, Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes an electronic recordkeeping mechanism called the Kentucky Electronic Methamphetamine Precursor Tracking (KEMPT) system for monitoring the sale of drugs containing ephedrine, pseudoephedrine, or phenylpropanolamine.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statute, KRS 218A.1446.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 218A.1446 by establishing an electronic recordkeeping mechanism to monitor the sale of drugs containing ephedrine, pseudoephedrine, or phenylpropanolamine.

(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 218A.1446 by establishing an electronic recordkeeping mechanism to monitor the sale of drugs containing ephedrine, pseudoephedrine, or phenylpropanolamine.

(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 passage of SB 3 from the 2012 Session of the General Assembly decreased the monthly over-the-counter purchase limit of ephedrine and pseudoephedrine in pill or tablet form from 9 grams to 7.2 grams within a 30 day period and imposed a 24 gram yearly limit. Therefore, this amendment updates the language of Section 5(1) for compliance with the 30 day and one year restrictions. Additionally, because SB 3 replaced the paper-tracking system currently in place for the purchase of medicines containing ephedrine and pseudoephedrine with a mandatory electronic system, this amendment deletes obsolete language related to paper-based tracking.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure compliance with 2012 (Regular Session) Ky. Acts ch. 122 (2012 SB 3).

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by making necessary updates for compliance with 2012 (Regular Session) Ky. Acts ch. 122 (2012 SB 3).

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by ensuring compliance with 2012 (Regular Session) Ky. Acts ch. 122 (2012 SB 3).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects pharmacies that sell drugs containing ephedrine, pseudoephedrine, or phenylpropanolamine.

(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: Kentucky's pharmacies will be required to comply with the provisions of SB 3 from the 2012 Session of the General Assembly, which replaced the paper-tracking system currently in place for the purchase of medicines containing ephedrine and pseudoephedrine with a mandatory electronic system. Addi-

tionally, pharmacies will not be allowed to sell over-the-counter ephedrine and pseudoephedrine in pill or tablet form to an individual who has purchased more than 7.2 grams during a 30 day period or 24 grams during a one year period.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Pharmacies will not incur any costs to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment provides needed revisions to ensure compliance with 2012 (Regular Session) Ky. Acts ch. 122 (2012 SB 3).

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

(a) Initially: No additional costs will be incurred to implement this amendment.

(b) On a continuing basis: No additional costs will be incurred to implement this amendment on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The system is provided at no cost to the state.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. 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 pharmacies that sell drugs containing ephedrine, pseudoephedrine, or phenylpropanolamine.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 218A.1446

3. 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? There will be no additional revenue generated for state or local government for the first year that this administrative regulation is in effect.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no additional revenue generated for state or local government during subsequent years after this administrative regulation becomes effective.

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

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this amendment on a continuing basis.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY
907 KAR 14:005E

This emergency administrative regulation is being promulgated to establish that the Medicaid program won't reimburse for health care-acquired conditions or other provider preventable condition. This action is necessary to comply with the Patient Protection and Patient Protection and Affordable Care Act and 42 C.F.R. 447.26, to reduce the likelihood of Medicaid recipients receiving health care-acquired conditions or other provider preventable conditions, and to protect the Medicaid program from paying for health care-acquired conditions or other provider preventable conditions. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
AUDREY HAYNES, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Commissioner's Office

(New Emergency Administrative Regulation)

907 KAR 14:005E. Health care-acquired conditions and other provider preventable conditions.

RELATES TO: KRS 205.560

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560, 42 C.F.R. 447.26, 42 U.S.C. 1396a Title II, Subtitle I, Section 2702 of the Patient Protection and Affordable Care Act

EFFECTIVE: June 22, 2012

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the Medicaid program policies, including managed care and non-managed care, regarding health care-acquired conditions and provider preventable conditions.

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services or its designee.

(2) "Health care-acquired condition" is defined by 42 C.F.R. 447.26.

(3) "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

(4) "Provider" is defined by KRS 205.8451(7).

(5) "Recipient" is defined by KRS 205.8451(9).

Section 2. Health Care-Acquired Conditions. (1) The department or a managed care organization shall not reimburse for medical assistance in any inpatient hospital setting for a health care-acquired condition.

(2) In accordance with 42 C.F.R. 447.26(d), if a health care-acquired condition occurs, a hospital shall:

(a) Identify, on the claim or document attached to or associated with the claim or course of treatment, the health care-acquired condition; and

(b) Submit the claim, a document associated with or regarding the claim, to the department within thirty (30) days of the occurrence of the health care-acquired condition.

Section 3. Other Provider Preventable Conditions. (1) The department or a managed care organization shall not reimburse for a:

(a) Wrong surgical or other invasive procedure performed on a recipient;

(b) Surgical or other invasive procedure performed on the wrong body part; or

(c) Surgical or other invasive procedure performed on the wrong person.

(2) In accordance with 42 C.F.R. 447.26, a provider who performs a procedure listed in subsection (1) of this section shall report it in writing, which shall include by electronic means or paper, to the department within thirty (30) days of performing the procedure.

(3) Subsection (1) and (2) of this section shall not apply to a nursing facility or an intermediate care facility for individuals with mental retardation or a developmental disability.

Section 4. Compliance with 42 C.F.R. 447.26. The department's or managed care organization's reimbursement shall comply with 42 C.F.R. 447.26(c)(2) and (3).

Section 5. Supersede. If any policy stated in another administrative regulation within Title 907 of the Kentucky Administration Regulations contradicts a policy stated in this administrative regulation, the policy stated in this administrative regulation shall supersede the policy stated elsewhere within Title 907.

NEVILLE WISE, Acting Commissioner

APPROVED BY AGENCY: June 12, 2012

FILED WITH LRC: June 22, 2012 at 3 p.m.

CONTACT PERSON(S): Lisa Lee (502) 564-6890, Jill Hunter (502) 564-5707 or Stuart Owen (502) 564-4321

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person(s): Lisa Lee, Jill Hunter, or Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Medicaid program policies (managed care and non-managed care) regarding health care-acquired conditions and other provider preventable conditions.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with a federal mandate in the Patient Protection and Affordable Care Act and 42 C.F.R. 447.26.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the Patient Protection and Affordable Care Act and KRS 205.560 by establishing that the Department for Medicaid Services (DMS) and managed care organizations (MCOs) won't reimburse for medical assistance for health care-acquired conditions or other provider preventable conditions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the Patient Protection and Affordable Care Act and KRS 205.560 by establishing that DMS and MCOs won't reimburse for medical assistance for health care-acquired conditions or other provider preventable conditions.

(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 rather than an amendment.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation rather than an amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation rather than an amendment.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation rather than an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation will affect inpatient and outpatient hospitals, ambulatory surgical centers, physicians' practices, advanced practice registered nurse practices, rural health clinics, federally-qualified health care centers, primary care centers, and dentists' practices.

(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 a provider performs a provider preventable condition they are required to report it to the Department for Medicaid Services within thirty (30) days.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Not reimbursing for provider preventable conditions may decrease the likelihood of provider preventable conditions occurring.

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

(a) Initially: DMS anticipates a minimal increase in administrative expenditures initially for Medicaid Management Information System (MMIS) programming and related work necessary to preclude payment for provider preventable conditions.

(b) On a continuing basis: DMS anticipates no continuing cost resulting from the provider preventable condition amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Title XIX of the Social Security Act and matching funds of general fund appropriations.

(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 current fiscal year budget will not need to be adjusted to provide funds for implementing this administrative regulation.

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

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Title II, Subtitle I, Section 2702 of the Patient Protection and Affordable Care Act, 42 U.S.C. 1396a(a)(19), 42 U.S.C. 1396a(a)(30) and 42 C.F.R. 447.26.

2. State compliance standards. KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect." KRS 205.560(1) states, "The scope of medical care for which the Cabinet for Health and Family Services undertakes to pay shall be designated and limited by regulations promulgated by the cabinet, pursuant to the provisions in this section."

3. Minimum or uniform standards contained in the federal mandate. Title II, Subtitle I, Section 2702 of the Patient Protection and Affordable Care Act and 42 C.F.R. 447.26 prohibit federal payments for provider preventable conditions. 42 U.S.C. 1396a(a)(19) requires Medicaid programs to provide care and services consistent with the best interests of Medicaid recipients. 42 U.S.C. 1396a(a)(30) requires Medicaid program payments to be consistent with efficiency, economy, and quality of care and sufficient to enlist enough providers so that care and services are available at least to the extent that such care and services are available to the general population in the same geographic area.

4. Will this administrative regulation impose stricter require-

ments, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendment does not impose stricter, additional or different requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter requirements are not imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This action is authorized by 42 C.F.R. 447.26 and this administrative regulation.

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

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

(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 amendment will not generate any additional revenue for state or local governments during subsequent years of implementation.

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) anticipates a minimal increase in administrative expenditures initially for Medicaid Management Information System (MMIS) programming and related work necessary to preclude payment for provider preventable conditions.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates very minimal on-going cost to administer the program.

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: No additional expenditures are necessary to implement this amendment.

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, July 10, 2012)

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 re-

quest 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 ser-	3,969	3,911	3,336	3,680

vices				
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 and equipment~~	~~699~~	~~457~~	~~459~~	~~759~~	~~750~~	~~945~~	~~1,137~~	~~1,593~~	~~2,950~~
~~Vehicle purchases (net outlay)~~	~~742~~	~~581~~	~~932~~	~~1,192~~	~~1,176~~	~~1,856~~	~~2,339~~	~~3,046~~	~~4,993~~
~~Gasoline and motor oil~~	~~1,317~~	~~956~~	~~1,236~~	~~1,496~~	~~1,951~~	~~2,229~~	~~2,439~~	~~2,885~~	~~3,707~~
~~Vehicle maintenance and repairs~~	~~264~~	~~240~~	~~249~~	~~358~~	~~464~~	~~511~~	~~518~~	~~729~~	~~1,071~~
~~Vehicle insurance~~	~~627~~	~~342~~	~~615~~	~~720~~	~~797~~	~~1,125~~	~~1,077~~	~~1,265~~	~~1,642~~
~~Vehicle lease, license, and other charges~~	~~125~~	~~89~~	~~88~~	~~160~~	~~128~~	~~175~~	~~221~~	~~308~~	~~583~~
~~Public transportation~~	~~117~~	~~65~~	~~115~~	~~89~~	~~124~~	~~152~~	~~175~~	~~242~~	~~757~~]

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	343	259	380	375	481	470	526	624	909

supplies									
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 **provide a rebuttable presumption[**~~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.

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.

GENERAL GOVERNMENT CABINET
Department of Military Affairs
Division of Administrative Services
(As Amended at ARRS, July 10, 2012)

106 KAR 2:030. National Guard adoption benefit program.

RELATES TO: **KRS 36.474, 36.477,[**~~2012 Ky. Acts ch. 7, secs 1, 2, KRS~~**]** 199.555(1)

STATUTORY AUTHORITY: **KRS 36.477(8)[**~~2012 Ky. Acts ch. 7, sec. 1(8)~~**]**

NECESSITY, FUNCTION AND CONFORMITY: **KRS 36.477(8)[**~~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 **KRS 36.477[**~~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 **KRS 36.477(5)[**~~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.

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.

GENERAL GOVERNMENT CABINET
Board of Dentistry
(As Amended at ARRS, July 10, 2012)

201 KAR 8:562. Licensure of dental hygienists.

RELATES TO: KRS 214.615, 304.40 - 075, 313.030, 313.040, 313.060, 313.080, 313.130, 313.254

STATUTORY AUTHORITY: KRS 214.615(2), 313.021(1)(a) - (c), 313.040(1), (2), (7), 313.254

NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.040 requires the board to promulgate administrative regulations relating to requirements and procedures for the licensure of dental hygienists. This administrative regulation establishes requirements and procedures for the licensure of dental hygienists.

Section 1. General Licensure Requirements. An applicant desiring licensure in the Commonwealth shall at a minimum:

(1) Understand, read, speak, and write the English language with a comprehension and performance level equal to at least the ninth grade of education, otherwise known as Level 4, verified by testing as necessary;

(2) Submit a completed, signed, and notarized Application for Dental Hygiene Licensure with an email contact address and an attached applicant photo taken within the past six (6) months;

(3) Pay the fee required by 201 KAR 8:520;

(4) Not be currently subject to disciplinary action pursuant to KRS Chapter 313 that would prevent licensure;

(5) Provide proof of completion of the requirements of KRS 214.615(1);

(6) Complete and pass the board's jurisprudence exam;

(7) Provide proof of having current certification in cardiopulmonary resuscitation (CPR) that meets or exceeds the guidelines established[~~set forth~~] by the American Heart Association, incorporated by reference in 201 KAR 8:532;

(8) Submit to a criminal background check from the Administrative Office of the Courts in Kentucky, from the state or states of residence for the last five (5) years, or by fingerprint;

(9) Provide verification within three (3) months of the date the application is received at the office of the board of any license to practice dental hygiene held previously or currently in any state or jurisdiction;

(10) Provide proof that the applicant is a graduate of a Commission on Dental Accreditation (CODA) accredited dental hygiene school or college or dental hygiene department of a university;

(11) Provide proof that the applicant has successfully completed the National Board Dental Hygiene Examination, which is written and theoretical, conducted by the Joint Commission on National Dental Examinations; and

(12) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

Section 2. Requirements for Licensure by Examination. (1) Each individual desiring initial licensure as a dental hygienist by examination shall complete all of the requirements established[~~listed~~] in Section 1 of this administrative regulation.

(2) Each individual desiring initial licensure as a dental hygienist by examination shall successfully complete a clinical examination within the five (5) years preceding the filing of his Application for Dental Hygiene Licensure[~~application~~].

(a) Prior to July 15, 2013, the board shall accept the following regional clinical examinations:

1. The examination of the Council of Interstate Testing Agencies (CITA);

2. The examination of the Central Regional Dental Testing Service (CRDTS);

3. The examination of the North East Regional Board of Dental Examiners (NERB);

4. The examination of the Southern Regional Testing Agency (SRTA); or

5. The examination of the Western Regional Examining Board (WREB).

(b) After July 15, 2013, the board shall only accept a nationalized clinical examination.

(3) An individual desiring initial licensure as a dental hygienist by examination more than two (2) years after fulfilling all of the requirements of his CODA accredited dental hygiene education shall:

(a) Hold a license to practice dental hygiene in good standing in another state or territory of the United States or the District of Columbia; or

(b) If the applicant does not hold a license to practice dental hygiene in good standing, complete a board-approved[~~board approved~~] refresher course prior to receiving a license to practice dental hygiene in the Commonwealth of Kentucky.

(4) An applicant who has taken a clinical examination three (3) times and failed to achieve a passing score shall not be allowed to sit for the examination again until the applicant has completed and passed a remediation plan prescribed by the board based on the applicant's deficiencies.

Section 3. Requirements for Licensure by Credentials. Each individual desiring initial licensure as a dental hygienist by credentials shall:

(1) Complete all of the requirements established[~~listed~~] in Sec-

tion 1 of this administrative regulation;

(2) Provide proof of having passed a state, regional, or national clinical examination used to determine clinical competency in a state or territory of the United States or the District of Columbia; and

(3) Provide proof that, for five (5) of the six (6) years immediately preceding the filing of the application, the applicant has been engaged in the active practice of dental hygiene while he or she was legally authorized to practice dental hygiene in a state or territory of the United States or the District of Columbia if the qualifications for the authorization were equal to or higher than those of the Commonwealth of Kentucky.

Section 4. Requirements for Charitable Limited Licensure. (1) Each individual desiring a charitable limited license shall:

(a) Understand, read, speak, and write the English language with a comprehension and performance level equal to at least the ninth grade of education, otherwise known as Level 4, verified by testing as necessary;

(b) Submit a completed, signed, and notarized Application for Charitable Dental Hygiene Licensure with an attached applicant photo taken within the past six (6) month;

(c) Not be subject to disciplinary action pursuant to KRS Chapter 313 that would prevent licensure;

(d) Have a license to practice dental hygiene in good standing in another state; and

(e) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

(2) An individual[~~Individuals~~] licensed pursuant to[~~under~~] this section shall:

(a) Work only with charitable entities registered with the Cabinet for Health and Family Services that[~~which~~] have met requirements of KRS 313.254 and 201 KAR 8:580;

(b) Only perform procedures allowed by KRS 313.254, which shall be completed within the duration of the charitable event;

(c) Be eligible for the provisions of medical malpractice insurance procured pursuant to[~~under~~] KRS 304.40-075;

(d) Perform these duties without expectation of compensation or charge to the individual and without payment or reimbursement by any governmental agency or insurer; [~~and~~]

(e) Have a charitable limited license that shall be good for two (2) years and expire during the regular dental hygiene renewal cycle; and[~~.~~]

(f) Comply with reciprocity requirements if applicable.**[~~,~~]**

1. A state that extends a reciprocal agreement shall comply with this section.

2. An individual shall notify the sponsor of a charitable clinic and the board of the intent to conduct or participate in the clinic.

3. An individual conducting or participate in a charitable clinic shall have a license to practice dental hygiene in the state in which the dental hygienist practices.

Section 5. Minimum Continuing Education Requirements. (1) Each individual desiring renewal of an active dental hygiene license shall complete thirty (30) hours of continuing education that relates to or advances the practice of dental hygiene and would be useful to the licensee in his practice.

(2) Acceptable continuing education hours shall include course content designed to increase:

(a) Competency in treating patients who are medically compromised or who experience medical emergencies during the course of dental hygiene treatment;

(b) Knowledge of pharmaceutical products and the protocol of the proper use of medications;

(c) Awareness of currently accepted methods of infection control;

(d) Knowledge of basic medical and scientific subjects including, biology, physiology, pathology, biochemistry, pharmacology, epidemiology, and public health;

(e) Knowledge of clinical and technological subjects;

(f) Knowledge of subjects pertinent to patient management, safety, and oral healthcare;

(g) Competency in assisting in mass casualty or mass immunization situations;

(h) Clinical skills through the volunteer of clinical charitable dental hygiene that meets the requirements of KRS 313.254;

(i) Knowledge of office business operations and best practices; or

(j) Participation in dental or dental hygiene association or society business meetings.

(3) A minimum of ten (10) hours shall be taken in a live interactive presentation format.

(4) A maximum of ten (10) hours total may be taken that meet the requirements of subsection (2)(h) - (j) of this section.

(5) All continuing education hours shall be verified by the receipt of a certificate of completion or certificate of attendance bearing:

(a) The signature of the provider;

(b) The name of the licensee in attendance;

(c) The title of the course or meeting attended or completed;

(d) The date of attendance or completion;

(e) The number of hours earned; and

(f) Evidence of the method of delivery if the course was taken in a live interactive presentation format.

(6) It shall be the sole responsibility of the individual dental hygienist to obtain documentation from the provider or sponsoring organization verifying participation as established[~~outlined~~] in subsection (5) of this section and to retain the documentation for a minimum of five (5) years.

(7) At license renewal, each licensee shall attest to the fact that he or she has complied with the requirements of this section.

(8) Each licensee shall be subject to audit of proof of continuing education compliance by the board.

Section 6. Requirements for Renewal of a Dental Hygiene License. (1) Each individual desiring renewal of an active dental hygiene license shall:

(a) Submit a completed, signed, and notarized Application for Renewal of Dental Hygiene Licensure with an email contact address and an attached applicant photo taken within the past six (6) months;

(b) Pay the fee required by 201 KAR 8:520;

(c) Maintain with no more than a thirty (30) day lapse, CPR certification that meets or exceeds the guidelines established[~~set forth~~] by the American Heart Association, incorporated by reference in 201 KAR 8:530, unless a hardship waiver is submitted to and subsequently approved by the board;

(d) Meet the requirements of KRS 214.615(1); and

(e) Meet the continuing education requirements as established[~~outlined~~] in Section 5 of this administrative regulation except in the following cases:

1. If a hardship waiver has been submitted to and is subsequently approved by the board;

2. If the licensee graduated in the first year of the renewal biennium, in which case the licensee shall complete one-half (1/2) of the hours as established[~~outlined~~] in Section 5 of this administrative regulation; and

3. If the licensee graduated in the second year of the renewal biennium, in which case the licensee shall not be required to complete the continuing education requirements established[~~outlined~~] in Section 5 of this administrative regulation.

(2) If a licensee has not actively practiced dental hygiene in the two (2) consecutive years preceding the filing of the renewal application, he or she shall complete and pass a board-approved[~~board approved~~] refresher course prior to resuming the active practice of dental hygiene.

Section 7. Retirement of a License. (1) Each individual desiring retirement of a dental hygiene license shall submit a completed and signed Retirement of License Form.

(2) Upon receipt of Retirement of License Form[~~this form~~], the board shall send written confirmation of retirement to the last known address of the licensee.

(3) A licensee shall not retire a license that has pending disciplinary action against it.

(4) Each retirement shall be effective upon the processing of the completed and signed Retirement of License Form by the board.

Section 8. Reinstatement of a License. (1) Each individual desiring reinstatement of a properly retired dental hygiene license shall:

(a) Submit a completed, signed, and notarized Application for Dental Hygiene Licensure with an email contact address and an attached applicant photo taken within the past six (6) months;

(b) Pay the fee required by 201 KAR 8:520;

(c) Show proof of having current certification in CPR that meets or exceeds the guidelines established[~~set forth~~] by the American Heart Association, incorporated by reference in 201 KAR 8:532;

(d) Provide verification within three (3) months of the date the Application for Dental Hygiene Licensure[~~application~~] is received at the office of the board of any license to practice dental hygiene held previously or currently in any state or jurisdiction;

(e) Submit to a criminal background check from the Administrative Office of the Courts in Kentucky, from the state or states of residence for the last five (5) years, or by fingerprint; and

(f) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

(2) If an individual is reinstating a license that was retired within the two (2) consecutive years immediately preceding the filing of the reinstatement application, the individual shall provide proof of having met the continuing education requirements as established[~~outlined~~] in Section 5 of this administrative regulation within those two (2) years.

(3) If the applicant has not actively practiced dental hygiene in the two (2) consecutive years immediately preceding the filing of the Application to Reinstate a Dental Hygiene License [~~reinstatement application~~], the applicant shall complete and pass a refresher course approved by the board.

(4) If a license is reinstated in the first year of a renewal biennium, the licensee shall complete all of the continuing education requirements as established[~~outlined~~] in Section 5 of this administrative regulation prior to the renewal of his license.

(5) If a license is reinstated in the second year of a renewal biennium, the licensee shall complete one-half (1/2) of the hours as established[~~outlined~~] in Section 5 of this administrative regulation prior to the renewal of his license.

Section 9. Requirements for Verification of Licensure. Each individual desiring verification of a dental hygiene license shall:

(1) Submit a signed and completed Verification of Licensure or Registration Form; and

(2) Pay the fee required by 201 KAR 8:520.

Section 10. Requesting a Duplicate License. Each individual desiring a duplicate dental hygiene license shall:

(1) Submit a signed and completed Duplicate License or Registration Request Form; and

(2) Pay the fee required by 201 KAR 8:520.

Section 11. Requirements for Local Anesthesia Registration. (1) An individual who has completed a course of study in dental hygiene at a board-approved CODA accredited institution on or after July 15, 2010, which meets or exceeds the education requirements as established in KRS 313.060(10) shall be granted the authority to practice local anesthesia upon the issuance by the board of a dental hygiene license.

(2) An individual licensed as a hygienist in Kentucky and not subject to disciplinary action who desires to administer local anesthesia and does not qualify to do so pursuant to[~~under~~] Section 12(1) of this administrative regulation shall complete a training and education course as described in KRS 313.060(10).

(3) The training and education course shall be offered by at least one (1) of the following institutions in Kentucky:

(a) University of Louisville School of Dentistry;

(b) University of Kentucky College of Dentistry;

(c) Western Kentucky University Dental Hygiene Program; and

(d) Kentucky Community Technical College System Dental Hygiene Programs.

(4) Training received outside of Kentucky shall be from a CODA accredited dental or dental hygiene school and shall meet the requirements established in KRS 313.060(10).

(5) Once the required training is complete the applicant shall:

(a) Complete the Dental Hygiene Local Anesthesia Registration Application; and

(b) Pay the fee required by 201 KAR 8:520.

(6) Individuals authorized to practice pursuant to[~~under~~] this provision shall receive a license from the board indicating registration to administer local anesthesia.

(7) A licensed dental hygienist shall not administer local anesthesia if the licensee does not hold a local anesthesia registration issued by the board.

(8) A[~~Any~~] licensed dental hygienist holding a local anesthesia registration from the board who has not administered block anesthesia, infiltration anesthesia, or nitrous oxide analgesia for one (1) year shall complete a board-approved[~~board approved~~] refresher course prior to resuming practice of that specific technique.

Section 12. Requirements for General Supervision Registration. (1) An individual licensed as a hygienist in Kentucky and not subject to disciplinary action who desires to practice under general supervision shall:

(a) Complete the General Supervision Registration Application;

(b) Meet the requirements of KRS 313.040(7)(a);

(c) Document through payroll records, employment records, or other proof that is independently verifiable, the dates and hours of employment by a dentist in the practice of dental hygiene that demonstrate the required two (2) years and 3,000 hours of experience;

(d) Successfully complete a live three (3) hour course approved by the board in the identification and prevention of potential medical emergencies that shall include, at a minimum, the following topics:

1. Medical history, including American Society of Anesthesiologists (ASA) classifications of physical status;

2. Recognition of common medical emergency situations, symptoms, and possible outcomes;

3. Office emergency protocols; and

4. Prevention of emergency situations during dental treatments.

(2) An individual authorized to practice pursuant to[~~under~~] these provisions shall receive a license from the board indicating registration to practice under general supervision.

(3) A dentist who employs a dental hygienist who has met the standards of this administrative regulation and who allows the dental hygienist to provide dental hygiene services pursuant to KRS 313.040(7) shall complete a written order prescribing the dental service or procedure to be done to a specific patient by the dental hygienist and shall retain the original order in the patient's dental record.

(4) The minimum requirements for the written order shall include:

(a) Medical history update;

(b) Radiographic records requested;

(c) Dental hygiene procedures requested;

(d) Name of the patient;

(e) Date of last oral examination;

(f) Date of the written order; and

(g) Signature of the dentist.

(5) The oral examination of the patient by the supervising dentist shall have been completed within the seven (7) months preceding treatment by the dental hygienist practicing under general supervision.

(6) The supervising dentist shall evaluate and provide to the board written validation of an employed dental hygienist's[~~hygienists~~] skills necessary to perform dental hygiene services established in KRS 313.040(7) as part of the General Supervision Registration Application.

(7) The supervising dentist shall provide a written protocol addressing the medically compromised patients who may or may not be treated by the dental hygienist. The dental hygienist shall only treat patients who are in the ASA Patient Physical Status Classification of ASA I or ASA II as established[~~listed~~] in Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students, 2007 Edition, American Dental Association.

(8) A licensed dental hygienist shall not practice under general supervision if the licensee does not hold a general supervision

registration issued by the board.

Section 13. Requirements for Starting Intravenous Access Lines. (1) An individual licensed as a dental hygienist in Kentucky and not subject to disciplinary action pursuant to[~~under~~] KRS Chapter 313 who desires to start an intravenous (IV) access line while under the direct supervision of a dentist who holds a sedation or anesthesia permit issued by the board shall:

(a) Submit a signed and completed Application for Intravenous Access Line Registration;

(b) Pay the fee required by 201 KAR 8:520; and

(c) Submit documentation proving successful completion of a board-approved course in starting IV access lines.

(2) An individual authorized to practice pursuant to[~~under~~] this provision shall receive a license from the board indicating registration to start IV access lines.

(3) A licensed dental hygienist shall not start an IV access line if the licensee does not hold a board-issued registration to start IV access lines.

Section 14. Requirements for Performing Laser Debridement. (1) An individual licensed as a dental hygienist in Kentucky and not subject to disciplinary action pursuant to[~~under~~] KRS Chapter 313 who desires to perform laser debridement while under the direct supervision of a dentist licensed by the board shall:

(a) Submit a signed and completed Application for Laser Debridement Registration;

(b) Pay the fee required by 201 KAR 8:520; and

(c) Submit documentation proving successful completion of a board-approved course in performing laser debridement.

(2) An individual authorized to practice pursuant to[~~under~~] this provision shall receive a license from the board indicating registration to perform laser debridement.

(3) A licensed dental hygienist shall not perform laser debridement if the licensee does not hold a registration to do so issued by the board.

Section 15. Requirements for Public Health Registered Dental Hygienist Registration. (1) An individual licensed as a hygienist in Kentucky and not subject to disciplinary action who desires to practice as a public health registered dental hygienist shall:

(a) Submit a completed Public Health Registered Dental Hygienist Application;

(b) Meet the requirements established in KRS 313.040(8);

(c) Document through payroll records, employment records, or other proof that is independently verifiable, the dates and hours of employment by a dentist in the practice of dental hygiene that demonstrate the required two (2) years and 3,000 hours of experience; **and**

(d) During each renewal cycle, successfully complete a live three (3) hour course that has been approved by the board on the identification and prevention of potential medical emergencies that shall include, at a minimum, the following topics:

1. Medical history, including American Society of Anesthesiologists (ASA) classifications of physical status;

2. Recognition of common medical emergency situations, symptoms, and possible outcomes;

3. Office emergency protocols; and

4. Prevention of emergency situations during dental treatments**[**~~; and~~

~~(e) The requirements of paragraphs (c) and (d) may be met by previous registration pursuant to Section 12 of this administrative regulation~~**]**.

(2) An individual authorized to practice pursuant to **subsection (1) of this section[**~~these provisions~~**]** shall receive a certificate from the board indicating registration to practice as a public health registered dental hygienist.

(3) A public health registered dental hygienist desiring to maintain certification as a public health registered dental hygienist shall be required to complete at least five (5) hours of continuing education in the area of public health or public dental health during each renewal cycle.

(4) Pursuant to KRS 313.040(8)(c), a public health registered dental hygienist may practice in a government-created public health program at the following sites:

(a) Local health departments;

(b) Public or private educational institutions that provide Head Start, preschool, elementary and secondary instruction to school-aged children under the jurisdiction of the State Board of Education, and that have an affiliation agreement with the health department of jurisdiction;

(c) Mobile and portable dental health programs under contract with a governing board of health; and

(d) Public or private institutions under the jurisdiction of a federal, state, or local agency**[**~~and other programs acceptable to the Cabinet for Health and Family Services and the board~~**]**.

(5) A public health registered dental hygienist shall perform dental hygiene services only under the supervision of the governing board of health, as required by KRS 313.040(3)(b), as established in KRS 313.040(8), and as identified by the Department for Public Health Practice Reference.

(a) These services shall be limited to preventative services.

(b) The public health registered dental hygienist shall only treat a patient who is in the ASA Patient Physical Status Classification of ASA I or ASA II as established in the current edition of Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students, American Dental Association.

(c) The informed consent shall be required prior to preventative services and shall include:

1. The name of the public health entity, including the name of the dentist, that assumes responsibility and control;

2. An inquiry as to the current dentist; and

3. A statement that services are provided by a dental hygienist without the direct supervision of a dentist.

(d) This administrative regulation shall not preclude a Kentucky-licensed dentist from directly participating in a public health program referenced in subsection 4(a), (b), (c), or (d) of this subsection.**[**~~(6) A public health registered dental hygienist shall refer each patient not currently under the care of a dentist to a licensed dentist for general dental needs.~~

~~(a) Each public health agency shall maintain a current list of available dentists for referral purposes.~~

~~(b) Documentation of the referral shall be maintained in the patient's health record within the health department organization as well as in a specific referral log.~~

~~(c) A general referral shall be made for a patient who has no obvious dental needs upon assessment.~~

~~(d) A specific referral shall be made for a patient who has an obvious pathologic area of concern that the public health registered dental hygienist determines should be assessed, diagnosed and possibly treated. The specific referral shall be mailed to the last known address of the parent or legal guardian.~~

~~(e) Failure of the parent or legal guardian to comply with a specific referral provided for in paragraph (d) of this subsection shall result in contact being made with the patient's parent or legal guardian with a record in the patient's chart and specific referral log. Notification of the specific referral shall be provided to the dentist or physician member of the governing board of health.~~

~~(7) Standardized Protocols.~~

~~(a) Through the dentist member, each health department's governing board of health shall annually review and adopt standardized protocols, for the practice of the public health registered dental hygienist, that are incorporated in the Kentucky Public Health Practice Reference.~~

~~(b) A governing board of health without a dentist member on its governing board or member county board of health shall have protocols reviewed and recommended for adoption or not by the State Dental Director, who shall be a dentist.~~

~~(c) These standardized protocols shall also be reviewed and approved or denied by the board on an annual basis.~~

~~(d) Each public health registered dental hygienist shall comply with all formally adopted, standardized protocols.~~**]**

Section 16. Issuance of Initial Licensure. If an applicant has completed the requirements for licensure the board shall:

(1) Issue a license in sequential numerical order; or

(2) Deny licensure due to a violation of KRS Chapter 313 or 201 KAR Chapter 8.

Section 17.[~~16.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Dental Hygiene Licensure", January 2011;

(b) "Application for Charitable Dental Hygiene Licensure", July 2010;

(c) "Application for Renewal of Dental Hygiene Licensure", January 2011;

(d) "Retirement of License Form", July 2010;

(e) "Application to Reinstate a Dental Hygiene License", July 2010;

(f) "Verification of Licensure or Registration Form", July 2010;

(g) "Duplicate License or Registration Request Form", July 2010;

(h) "Dental Hygiene Local Anesthesia Registration Application", July 2010;

(i) "General Supervision Registration Application", July 2010;

(j) "Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students", 2007 Edition;

(k) "Application for Intravenous Access Line Registration", July 2010; [~~and~~]

(l) "Application for Laser Debridement Registration", July 2010; and

(m) "**Application for Public Health Registered Dental Hygienist", April 2012**["~~Application for Laser Debridement Registration", March 2012~~].

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DR. ADAM RICH, Board President

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GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, July 10, 2012)

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 program;

(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, **if**[~~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, recom-

mended, 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 **that[**~~such~~**]** decision.

(b) The participant shall acknowledge in writing **his or her[**~~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.

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TOURISM, ARTS AND HERITAGE CABINET
Kentucky Department of Fish and Wildlife Resources
(As Amended at ARRS, July 10, 2012)

301 KAR 2:041. Shooting areas, dog training areas, commercial foxhound training enclosures, and bobwhite shoot-to-train season.[~~areas and foxhound training enclosures.~~]

RELATES TO: KRS 150.010, 150.170, 150.180, 150.280, 150.630, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.175(28), 150.240(2)[~~150.175, 150.240~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations establishing hunting seasons, bag limits, and methods of taking wildlife, and to make these requirements apply to a limited area or to the entire state. KRS 150.175(28) authorizes the issuance of a special license for residents and nonresidents for the purpose of hunting on licensed shooting areas. KRS 150.240(2) authorizes the department to promulgate administrative regulations governing public or commercial shooting areas. This administrative regulation establishes a bobwhite shoot-to-train season and other requirements to ensure uniform operation of shooting areas, dog training areas, and commercial foxhound training enclosures.[~~KRS 150.175(28) authorizes the issuance of a special license for residents and nonresidents for the purpose of hunting on licensed shooting areas. KRS 150.240 authorizes the department to promulgate administrative regulations governing public or commercial shooting areas. This administrative regulation establishes procedures to ensure uniform operation of shooting areas, dog training areas, foxhound training enclosures, and to protect native wildlife.~~]

Section 1. Definitions. (1) "Dog training area permit" means a permit that designates an area to allow dog training and shooting of captive-reared bobwhite quail.[~~year round.~~]

(2) "Hoofed animal" means ungulate wildlife except wild hog and javelina.

(3) "Shooting area" means a place where animals are held or propagated in captivity and released to be taken by hunters.

Section 2. Seasons. (1) The dog training area season and the dog training area hunting season shall be year-round for:

(a) Captive-reared bobwhite quail; and

(b) Pheasant and chukar, pursuant to 301 KAR 3:030.

(2) The shooting area hunting seasons **shall be[**~~are~~**]** as follows:

(a) Bobwhite quail: August 15 through April 15;

(b) Mallard ducks: year-round;

(c) Hoofed animals: September 1 through May 15; and

(d) All other species: the statewide season in effect where the shooting area is located.

(3) The bobwhite shoot-to-train season shall be from August 15 through May 15.

Section 3. Bobwhite Shoot-to-Train Requirements. (1) A person shall only shoot on private land.

(2) Prior to shooting, a person shall:

(a) Apply on **the Bobwhite Quail Shoot-to-Train Application[**~~a form~~**]** provided by the department;

(b) Submit the completed application to the department;

(c) Possess a valid Kentucky hunting license or be license-exempt pursuant to KRS 150.170;

(d) Possess:

1. Proof of purchase of captive-reared bobwhite quail; or

2. A captive wildlife permit**;[**~~.~~**]**

(e) Band all captive-reared bobwhite quail with:

1. Aluminum, #7 leg bands; or

2. Department-issued, aluminum leg bands;

(f) Walk and examine the entire area to be hunted to ensure that no wild bobwhite quail are present; and

(g) Release banded birds immediately prior to dog training or shooting.

(3)[~~(h)~~**]** A person shall contact the department to update an application that is no longer accurate.

(4)[~~(3)~~**]** The number of leg bands on the dog training or shooting site shall not exceed the number of captive-reared bobwhite present on the site.

(5)[~~(4)~~**]** A person shall comply with the holding and permit requirements established in 301 KAR 2:081 if:

(a) Captive-reared bobwhite quail are possessed for more than ten (10) days; or

(b) More than 100 captive-reared bobwhite quail are possessed.

Section 4. Permits, Applications, and Transfers. (1) A person shall obtain a permit from the department before operating the following:

(a) A shooting area for birds;

(b) A dog training area; or

(c) A commercial foxhound training enclosure.

(2) A new shooting area permit shall not be issued for hoofed animals.

(3) The following permits shall be valid from July 1 through June 30:

(a) Dog training area permit;

(b) Shooting area permit for birds; and

(c) Shooting area permit for hoofed animals in existence prior to March 8, 2002.

(4) A commercial foxhound training enclosure permit shall be valid for one (1) year from the date of issuance.

(5) A person shall **apply using the appropriate form provided by the department:**

(a) Shooting Area Permit Application;

(b) Commercial Foxhound Training Enclosure Permit Application; or

(c) Dog Training Area Permit Application.[~~only apply on a form provided by the department.~~**]**

(6) An application for a dog training area shall not be approved until a department conservation officer or biologist inspects the area to determine if it meets the requirements **established** in Section 6 of this administrative regulation.

(7) An applicant for a shooting area, dog training area, or commercial foxhound training enclosure shall provide documentation proving the applicant is the:

(a) Owner of the land where the facility is to be located; or

(b) Lessee of the land where the facility is to be located.

(8) A shooting area permit shall be transferable if:

(a) A currently permitted facility is sold to another entity;

(b) The facility is inspected by a conservation officer **or biologist** prior to transfer;

(c) The seller of the facility is compliant with the provisions of this administrative regulation; and

(d) The purchaser of the facility:

1. Completes a Shooting Area **Permit Transfer Application[**~~Transfer Form~~**]** provided by the department; and

2. Provides a plat of the shooting area boundaries completed by a licensed surveyor.

(9) A transferred shooting area permit shall only be valid for the land that was permitted prior to the time of transfer.

(10) If ownership of a commercial foxhound training enclosure changes,**[**~~then~~**]** the new owner shall be responsible for applying for a new permit.

(11) A person hunting on a shooting area shall:

(a) Possess a valid Kentucky hunting license;

(b) Possess a valid shooting area hunting license;

(c) Possess a shoot-to-retrieve field trial permit; or

(d) Be hunting license exempt pursuant to KRS 150.170.

(12) A shooting area hunting license **shall be[**~~is only~~**]** valid for **only** one **(1)** specific shooting area.

Section 5. Shooting Area Requirements. (1) The boundary of a shooting area shall be marked with signs:

(a) At least eight (8) inches by twelve (12) inches;

(b) Having a white background with contrasting letters at least one (1) inch high;

(c) That read "Shooting Area"; and

(d) Placed no more than 500 feet apart.

(2) A person shall check in at a designated check station or

with the operator of a shooting area before hunting.

(3) A permit holder shall maintain a daily record of people using the area which includes each person's:

(a) Name:

(b) Address; and

(c) Hunting license number.

(4) A permit holder shall:

(a) Obtain a bill of sale or receipt for each purchase that contains the number of:

1. Game birds purchased; or

2. Game bird eggs purchased; and

(b) Retain previous year's records and receipts for at least one (1) full year.

(5) A permit holder shall possess a commercial captive wildlife permit, if applicable, pursuant to 301 KAR 2:081.

(6) A field trial may be held on a shooting area year-round.

Section 6. Dog Training Area Requirements. (1) A dog training area shall be between ten (10) and seventy-five (75) acres in size.

(2) The dog training area shall:

(a) Be contiguous;

(b) Consist of at least ninety (90) percent mowed or cut grass no greater than ten (10) inches in height; **and**

(c) Have a marked boundary with signs:

1. At least eight (8) inches by twelve (12) inches high;

2. Having a white background with contrasting letters at least one (1) inch high;

3. That read "Dog Training Area"; and

4. Placed no more than 150 feet apart.

(3) A permit holder shall maintain a daily record of people using the area which includes each person's:

(a) Name;

(b) Address; and

(c) Hunting license number.

(4) A permit holder shall retain previous year's records and receipts for at least one (1) full year.

(5) A person using a dog training area shall possess:

(a) A bill of sale or receipt for any bobwhite quail released on the area; and

(b) A captive wildlife permit, if applicable, pursuant to 301 KAR 2:081.

(6) A field trial may be held on a dog training area year-round.

Section 7. Hoofed Animals. (1) A shooting area permit holder shall not import or release a hoofed animal.

(2) A grandfathered shooting area permit holder who legally holds hoofed animals shall:

(a) Keep a record of the:

1. Total number of each hoofed species taken;

2. Name of each hunter:

3. Address of each hunter;

4. Hunting license number of each hunter; and

5. Species taken by each hunter; and

(b) Submit to the department all records each month from September through May.

(3) A permit holder shall not import, possess, release, or hunt any member of the family Suidae.

Section 8. Commercial Foxhound Training Enclosures. (1) A commercial foxhound training enclosure shall:

(a) Be at least 200 acres;

(b) Be fenced to enclose foxes; and

(c) Not be divided by an interior fence that restricts the range of foxes to less than 200 acres.

(2) Two (2) or more enclosures under the same ownership or management may be licensed under the same permit if:

(a) Each enclosure is at least 200 acres in size; and

(b) The enclosures share a common fence.

(3) The permit holder shall provide for the foxes:

(a) Food;

(b) Water;

(c) Shelter from inclement weather; and

(d) At least one (1) of the following, which is sufficient to prevent capture by foxhounds, per every fifty (50) acres:

1. Natural den;

2. Constructed den;

3. Box; or

4. Hollow log.

(4) A fox held for release into an enclosure shall be confined **pursuant** to 301 KAR 2:081.

(5) A person shall not intentionally engage in an activity which would cause foxhounds to injure or kill a fox in an enclosure.

(6) Fox chasing on permitted areas shall be considered an authorized field trial if a fox is not captured or killed.

(7) A person shall not take any wildlife within an enclosure except under legal statewide seasons and methods.

(8) The owner or operator of an enclosure shall:

(a) Allow a conservation officer to inspect the facility at any reasonable time; and

(b) Comply with all permitting requirements, if applicable, pursuant to 301 KAR 2:081.

Section 9. Revocation of Permits. (1) Revocation. A person who is convicted of a fish and wildlife violation, including KRS Chapter 150, KAR Title 301, **or[**~~and~~**]** any federal fish and wildlife laws**,** shall have his or her permit revoked for a period of **one (1) year[**~~three (3) years~~**]**.

(2) Appeal Procedures. An individual whose request for a permit has been denied or revoked may request an administrative hearing pursuant to KRS Chapter 13B.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Shooting Area Permit Application", **July** 2012 edition;

(b) "Commercial Foxhound Training Enclosure Permit Application", **July** 2012 edition;

(c) "Dog Training Area Permit Application", **July 2012[**~~2004~~**]** edition;

(d) "Shooting Area Permit Transfer Application", **July** 2012 edition; and

(e) "Bobwhite Quail Shoot-to-Train Application", **July** 2012 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.[~~Section 2. Dog Training Area Season. (1) Captive-reared bobwhite: year round.~~

~~(2) Pheasant and chukar: year-round pursuant to 301 KAR 3:030.~~

~~Section 3. Shooting Area Hunting Seasons. (1) Bobwhite: August 15 through April 15.~~

~~(2) Mallard duck: year round.~~

~~(3) Hoofed animals: September 1 through May 15.~~

~~(4) Seasons for other species shall conform to those in effect where the preserve is located.~~

~~Section 4. Permits, Applications, and Transfers. (1) Without first obtaining a permit from the department, a person shall not operate:~~

~~(a) A shooting preserve for birds;~~

~~(b) A dog training area; or~~

~~(c) A foxhound enclosure with field trial authorization to exempt a participant from hunting license requirements.~~

~~(2) New permits shall not be issued for shooting areas for any hoofed animals.~~

~~(3) Dog training area permits, shooting area permits for hoofed animals in existence prior to March 8, 2002, and shooting area permits for birds shall be valid from July 1 through June 30 and renewable annually.~~

~~(4) An application:~~

~~(a) Shall be made on a form supplied by the department; and~~

~~(b) For a foxhound training enclosure permit shall be signed by each person having a financial interest in the area.~~

~~(5) The applicant for a permit shall produce evidence that he is the owner or a bona fide lessee of record of the land where he proposes to establish a shooting area or dog training area.~~

~~(6) A shooting area permit may be transferable if an existing~~

~~and currently permitted shooting area is sold to a person or entity who will maintain and operate the shooting area.~~

~~(a) The shooting area permit holder who is transferring the permit shall be compliant with all provisions of this administrative regulation prior to transfer.~~

~~(b) Prior to transfer, the facility shall be inspected for compliance with this administrative regulation by a conservation officer.~~

~~(c) Prior to authorizing the transfer of a shooting area permit, the purchaser of the shooting area shall apply on a KDFWR shooting area transfer form, complete the form in its entirety, and shall include a plat of the shooting area boundaries performed by a licensed surveyor.~~

~~(d) A transferred shooting area permit may be renewed each year by submitting a shooting area permit application on or before May 30.~~

~~(e) A transferred shooting area permit shall be given the same rights as the existing permitted facility at the time of transfer.~~

~~(f) A transferred shooting area permit shall only be valid for the land that was permitted prior to the time of the transfer and as described in the plat.~~

~~(7) An applicant for a foxhound enclosure permit shall provide evidence that he is the owner or operator of the enclosure.~~

~~(8) If the ownership or management of a foxhound training enclosure changes, the new owner or manager shall apply for a new permit.~~

~~(9) Prior to renewal of a permit, reporting requirements as established in Section 8 of this administrative regulation shall be met for the previous year.~~

~~Section 5. Shooting Area Hunting Licenses. (1) Effective August 1, 2008, persons hunting solely on a shooting area shall be eligible to purchase a shooting area hunting license from the department's website.~~

~~Section 6. Shooting Area and Dog Training Area Inspection. (1) Size requirements and posting.~~

~~(a) Shooting areas.~~

~~1. The boundary of a shooting area shall be marked with signs:~~

~~a. At least eight (8) inches by twelve (12) inches;~~

~~b. Having a white background with contrasting letters at least one (1) inch high;~~

~~c. Stating "Shooting Area"; and~~

~~d. Placed not be more than 500 feet apart.~~

~~(b) Dog Training Areas.~~

~~1. Size requirement: minimum size shall be ten (10) acres and maximum size shall be seventy-five (75) acres.~~

~~2. Inspection.~~

~~a. A department biologist or conservation officer shall inspect the area prior to application approval.~~

~~b. The area shall consist of mowed or cut grass with no more than ten (10) percent grain or food plots.~~

~~3. The boundary of a dog training area shall be marked with signs:~~

~~a. At least 8 in. x 12 in.;~~

~~b. Have a white background with contrasting letters at least one (1) inch high;~~

~~c. State "Dog Training Area"; and~~

~~d. Placed not more than 150 feet apart.~~

~~Section 7. Operating Requirements for Shooting Areas and Dog Training Areas. (1) A person shall not hunt or carry a gun on a shooting area before checking in at a designated check station or with the operator.~~

~~(2) A person shall not hunt or carry a gun on a shooting area or dog training area without a current Kentucky hunting license or shoot-to-retrieve field trial permit.~~

~~(3) A person observing but not participating in a field trial shall not be required to possess a hunting license.~~

~~(4) A field trial may be held throughout the year on a permitted shooting area or dog training area.~~

~~Section 8. Record Keeping and Reporting Requirements. (1) Shooting Areas.~~

~~(a) The permit holder shall maintain a daily record of hunting activities on the area showing the name, address and hunting license number of each person using the area.~~

~~(b) A shooting area operator shall obtain a receipt showing the number of game bird eggs or game birds purchased by species.~~

~~(c) A shooting area permit holder shall retain records and receipts for at least one (1) year.~~

~~(d) A person hunting on a shooting area or the shooting area operator shall have in his possession:~~

~~1. A bill of sale for birds released for hunting; or~~

~~2. A copy of the shooting area's commercial captive wildlife permit.~~

~~(2) Dog Training Areas.~~

~~(a) The permit holder shall maintain a daily record of training or field trial activities on the area showing the name, address and hunting license number of each person using the area.~~

~~(b) A dog training area permit holder shall retain records and receipts for at least one (1) year.~~

~~(c) A person training dogs on a dog training area shall have in his possession;~~

~~1. A bill of sale for bobwhite released for training; or~~

~~2. A copy of their captive wildlife permit.~~

~~Section 9. Hoofed Animals. (1) A shooting area permit holder shall not import into or release a hoofed animal.~~

~~(2) The permit holder shall:~~

~~(a) Keep a record of:~~

~~1. The number of each hoofed species taken; and~~

~~2. The name, address, hunting license number and game killed by species by each hunter.~~

~~(b) At the end of each month from September through May, submit these records to the department.~~

~~(3) A permit holder shall not import, release or hunt wild hogs, javelinas, or any member of the family Suidae.~~

~~Section 10. Foxhound Training Enclosure Requirements. (1) To qualify for a permit, a foxhound training enclosure shall be:~~

~~(a) At least 200 acres;~~

~~(b) Fenced to enclose foxes; and~~

~~(c) Not divided by an interior fence that restrict the range of foxes to less than 200 acres.~~

~~(2) Two (2) or more enclosures under the same ownership or management may be licensed under the same permit if:~~

~~(a) Each is at least 200 acres; and~~

~~(b) The enclosures share a common fence.~~

~~(3) The operator shall provide:~~

~~(a) Proper food, water, and shelter from inclement weather for foxes within the enclosure.~~

~~(b) At least one (1) natural or constructed den, box or hollow log per fifty (50) acres, sufficient to hold the foxes within the enclosure, preventing their capture by hounds.~~

~~(c) If a fox is held for release into an enclosure, a cage:~~

~~1. Eight (8) feet long, four (4) feet wide and six (6) feet high;~~

~~2. With a shelf eighteen (18) inches wide, three (3) feet high and four (4) feet long; and~~

~~3. Containing an enclosed den box capable of housing a pair of foxes.~~

~~(4) A person shall not hold more than one (1) pair of foxes or a pair and their young less than one (1) year old per cage.~~

~~Section 11. Operations and Licensing Requirements on Foxhound Training Enclosures. (1) A person shall not intentionally engage in an activity which would cause foxhounds to injure or kill a fox in the enclosure.~~

~~(2) Fox chasing on permitted areas shall be considered an authorized field trial if a fox is not captured or killed.~~

~~(3) A person shall not take wildlife within an enclosure except under applicable administrative regulations and license requirements.~~

~~(4) An operator shall:~~

~~(a) Allow the department to inspect his facilities; and~~

~~(b) Comply with commercial pet and propagation permit requirements in obtaining and holding foxes.~~

~~Section 12. Revocation of Permits. (1) Revocation. A person~~

~~convicted of a fish and wildlife violation including KRS Chapter 150, KAR Title 301, and federal wildlife laws shall have his permit revoked for a period of three (3) years.~~

~~(2) Appeal Procedures. An individual whose request for a permit has been denied or revoked may request an administrative hearing pursuant to KRS Chapter 13B.~~

~~Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "Shooting Area Permit Application", 2006;~~

~~(b) "Application for Commercial Foxhound Training Enclosure Permit," 1998;~~

~~(c) "Dog Training Area Permit Application", 2004; and~~

~~(d) "Shooting Area Permit Transfer Form", 2006.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.~~]

BENJY KINMAN, Deputy Commissioner,
For DR. JONATHAN GASSETT, Commissioner
MARCHETA SPARROW, Secretary
APPROVED BY AGENCY: March 2, 2012
FILED WITH LRC: April 12, 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.

TOURISM, ARTS AND HERITAGE CABINET
Kentucky Department of Fish and Wildlife Resources
(As Amended at ARRS, July 10, 2012)

301 KAR 3:022. License, tag, and permit fees.

RELATES TO: KRS 150.025, 150.175, 150.180, 150.183, 150.240, 150.275, 150.280, 150.290, 150.450, 150.485, 150.520, 150.525, 150.600, 150.603, 150.620, 150.660, 150.720

STATUTORY AUTHORITY: KRS 150.175, 150.195(4)(f), 150.225, 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.175 authorizes the types of licenses, permits and tags. KRS 150.195(4)(f) requires the department to promulgate an administrative regulation establishing the license and permit terms and the expiration date of licenses and permits. KRS 150.225 authorizes the department to promulgate administrative regulations establishing reasonable license fees relating to hunting, fishing, and trapping. KRS 150.620 authorizes the department to charge reasonable fees for the use of lands and waters it has acquired for wildlife management and public recreation. This administrative regulation establishes fees and terms for licenses, permits, and tags.

Section 1. Licenses, tags, and permits listed in this section shall be valid from March 1 through the last day of February the following year. (1) Sport fishing licenses:

(a) Statewide annual fishing license (resident): twenty (20) dollars;

(b) Statewide annual fishing license (nonresident): fifty (50) dollars;

(c) Joint statewide fishing license (resident): thirty-six (36) dollars; and

(d) Trout permit (resident or nonresident): ten (10) dollars.

(2) Commercial fishing licenses:

(a) Commercial fishing license (resident) plus ten (10) resident commercial gear tags: $150; and

(b) Commercial fishing license (nonresident) plus ten (10) nonresident commercial gear tags: $600.

(3) Commercial fishing gear tags (not to be sold singly):

(a) Commercial fishing gear tags (resident) block of ten (10) tags: fifteen (15) dollars; and

(b) Commercial fishing gear tags (nonresident) block of ten (10) tags: $100.

(4) Hunting licenses:

(a) Statewide hunting license (resident): twenty (20) dollars;

(b) Statewide hunting license (nonresident): $130;

(c) Statewide junior hunting license (resident or nonresident): five (5) dollars;

(d) Shooting preserve hunting license (resident or nonresident): five (5) dollars;

(e) Statewide waterfowl permit (resident or nonresident): fifteen (15) dollars; and

(f) Migratory game bird permit (resident or nonresident): ten (10) dollars.

(5) Combination hunting and fishing license (resident): thirty (30) dollars.

(6) Senior/disabled combination hunting and fishing license (resident): five (5) dollars.

(7) Trapping licenses:

(a) Trapping license (resident): twenty (20) dollars;

(b) Trapping license (resident landowner/tenant): ten (10) dollars;

(c) Trapping license (nonresident): $130; and

(d) Junior trapping license (resident): five (5) dollars.

(8) Game permits:

(a) Resident[~~Game permit, resident~~] bear: thirty (30) dollars;

(b) Resident bear chase: thirty (30) dollars.

(c) Resident junior bear chase: ten (10) dollars;

(d) Resident quota elk hunt permit: thirty (30) dollars;

(e)[~~(c)~~] Nonresident quota elk hunt permit: $365;

(f)[~~(d)~~] Resident out-of-zone elk hunt permit: thirty (30) dollars;

(g)[~~(e)~~] Nonresident out-of-zone elk hunt permit: $365;

(h)[~~(f)~~] Game permit, resident deer: thirty (30) dollars;

(i)[~~(g)~~] Game permit, nonresident deer: sixty (60) dollars;

(j)[~~(h)~~] Junior game permit, deer (resident or nonresident): ten (10) dollars;

(k)[~~(i)~~] Bonus antlerless deer permit (two (2) tags per permit) (resident or nonresident): fifteen (15) dollars;

(l)[~~(j)~~] Bonus quota hunt deer permit (resident or nonresident): thirty (30) dollars;

(m)[~~(k)~~] Game permit, resident spring turkey: thirty (30) dollars;

(n)[~~(l)~~] Game permit, nonresident spring turkey: sixty (60) dollars;

(o)[~~(m)~~] Game permit, resident fall turkey: thirty (30) dollars;

(p)[~~(n)~~] Game permit, nonresident fall turkey: sixty (60) dollars; and

(q)[~~(o)~~] Junior game permit, turkey (resident or nonresident): ten (10) dollars.

(9) Peabody individual permit: fifteen (15) dollars.

(10) Commercial mussel licenses:

(a) Musseling license (resident): $400;

(b) Musseling license (nonresident): $1,600;

(c) Mussel buyer's license (resident): $600; and

(d) Mussel buyer's license (nonresident): $1,600.

(11) Sportsman's licenses (resident) (includes resident hunting and fishing combination, spring turkey permit, fall turkey permit, trout permit, state waterfowl permit and game permit for deer): ninety-five (95) dollars.

(12) Junior sportsman's license (resident or nonresident) (includes junior hunting license, junior deer permit, junior turkey permit, trout permit and waterfowl permit): twenty-five (25) dollars.

(13) Land Between the Lakes hunting permit: twenty (20) dollars.

(14) Conservation permit: five (5) dollars.

Section 2. Licenses, tags and permits, listed in this section shall be valid for the calendar year in which they are issued. (1) Live fish and bait dealer's licenses:

(a) Live fish and bait dealer's license (resident): fifty (50) dollars; and

(b) Live fish and bait dealer's license (nonresident): $150.

(2) Commercial taxidermist license: $150.

(3) Commercial guide licenses:

(a) Commercial guide license (resident): $150; and

(b) Commercial guide license (nonresident): $400.

(4) Shooting **area[**~~preserve~~**]** permit: $150.

(5) Dog training area permit: fifty (50) dollars.

(6) Collecting permits:

(a) Educational wildlife collecting permit: twenty-five (25) dollars; and
(b) Scientific wildlife collecting permit: $100.
(7) Nuisance wildlife control operators (NWCO) permit: $100;
(8) Pay lake license:
(a) First two (2) acres or less: $150; and
(b) Per additional acre or part of acre: twenty (20) dollars.
(9) Commercial captive wildlife permit: $150.
(10) Commercial fish propagation permit: fifty (50) dollars.
(11) Wildlife rehabilitator's permit: twenty-five (25) dollars.
(12) Annual wildlife transportation permit: $250; and
(13) Peabody Wildlife Management Area annual event permit: $250; and
(14) Fish transportation permit: twenty-five (25) dollars.

Section 3. Licenses, tags and permits listed in this section shall be valid for three (3) years from the date of issue. (1) Falconry permit: seventy-five (75) dollars.
(2) Noncommercial captive wildlife permit: seventy-five (75) dollars.

Section 4. Licenses, tags and permits listed in this section shall be valid for the date or dates specified on each. (1) Short-term licenses:
(a) One (1) day resident fishing license: seven (7) dollars;
(b) One (1) day nonresident fishing license: ten (10) dollars;
(c) Seven (7) day nonresident fishing license: thirty (30) dollars;
(d) Fifteen (15) day nonresident fishing license: forty (40) dollars.
(e) One (1) day resident hunting license (not valid for deer, elk, or turkey hunting): seven (7) dollars.
(f) One (1) day nonresident hunting license (not valid for deer, elk, or turkey hunting): ten (10) dollars.
(g) Five (5) day nonresident hunting license (not valid for deer, elk, or turkey hunting): forty (40) dollars;
(h) Three (3) day fur bearer's license: fifty (50) dollars; and
(2) Individual wildlife transportation permit: twenty-five (25) dollars.
(3) Special resident commercial fishing permit: $600.
(4) Special non-resident commercial fishing permit: $900.
(5) Commercial waterfowl shooting area permit: $150.
(6) Shoot to retrieve field trial permits:
(a) Per trial (maximum four (4) days): seventy-five (75) dollars; and
(b) Single day: twenty-five (25) dollars.
(7) Boat dock permit: $100 per ten (10) year permit period beginning January 1, 2008, except that the fee shall be pro-rated for the number of years remaining in the ten (10) year period.
(8) Shoreline use permit: Valid for a fifteen (15) year permit period beginning January 1, 2010 and shall contain three (3) tiers:
(a) Tier I: $100;
(b) Tier II: $200;
(c) Tier III: $300; and
(d) The fees shall be pro-rated to the nearest five (5) year interval remaining in the fifteen (15) year permit period.
(9) Peabody individual event permit: twenty-five (25) dollars.
(10) Commercial Roe-bearing Fish Buyer's permit;
(a) Commercial Roe-bearing Fish Buyer's permit (resident): $500; and
(b) Commercial Roe-bearing Fish Buyer's permit (nonresident): $1,000.
(11) Commercial Roe-bearing Fish Harvester's permit:
(a) Commercial Roe-bearing Fish Harvester's permit (resident): $500; and
(b) Commercial Roe-bearing Fish Harvester's permit (nonresident): $1,500.
(12) Otter Creek Outdoor Recreation Area:
(a) Daily Entry Permit: three (3) dollars, with children under twelve (12) free; and
(b) Daily Special Activities Permit: seven (7) dollars.
(13) Commercial foxhound training enclosure permit: $150.

Section 5. Licenses, tags, and permits listed in this section shall be valid on a per unit basis as specified. (1) Ballard waterfowl hunt (per person, per day): fifteen (15) dollars.
(2) Pheasant hunt permit (per person, per day): twenty-five (25) dollars.
(3) Horse stall rental (per space, per day): two (2) dollars.
(4) Dog kennel rental (per dog, per day): fifty (50) cents.
(5) Pond stocking fee (per stocking):
(a) Ponds less than 1.5 surface acres: seventy-five (75) dollars;
(b) Ponds from 1.5 to 2.9 surface acres: $200; and
(c) Ponds equal to or greater than 3.0 surface acres: $200 plus $150 for each additional surface acre of water over 3.0 acres prorated on a 0.25 acre basis.
(6) Commercial captive cervid permit (per facility, per year): $150.
(7) Noncommercial captive cervid permit (per facility; per three years): seventy-five (75) dollars.

Section 6. The following licenses listed in this section shall be valid from April 1 through March 31 of the following year:
(1) Fur processor's license (resident): $150.
(2) Fur buyer's license (resident): fifty (50) dollars.
(3) Fur buyer's license (nonresident): $300.

Section 7. The following Otter Creek Outdoor Recreation Act permits shall be valid from July 1 through June 30 of the following year:
(1) Annual Entry Permit: thirty (30) dollars, with children under twelve (12) free; and
(2) Annual Special Activities Permit: seventy (70) dollars.

BENJY T. KINMAN, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
MARCHETA SPARROW, Secretary
APPROVED BY AGENCY: June 12, 2012
FILED WITH LRC: June 12, 2012 at 4 p.m.
CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-9136, email fwpubliccomments@ky.gov.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, July 10, 2012)

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", **July 10**[~~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 **7/10/12[**~~5/15/12~~**])**
LLCC 09-14-02 Guidelines for Contractors (Amended **7/10/12[**~~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 **7/10/12[**~~5/15/12~~**])**
LLCC 10-01-01 Special Management Inmates (Amended **7/10/12[**~~5/15/12~~**])**
LLCC 11-01-01 Dining Room Guidelines (Amended **7/10/12[**~~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 **7/10/12[**~~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 **7/10/12[**~~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 **7/10/12[**~~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 **7/10/12[**~~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.

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
Department of Corrections
(As Amended at ARRS, July 10, 2012)

501 KAR 6:260. Procedures for recommendation of early termination of probation and review of compliance of supervised individuals.

RELATES TO: KRS Chapters 196, 439

STATUTORY AUTHORITY: KRS 196.035, 439.470, 439.552

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 439.470, and 439.552 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 any of its divisions and to establish procedures for recommending early termination of probation. This administrative regulation establishes the procedures for recommendations for early termination of probation for a supervised individual who meets the criteria stated in KRS 439.552 and review of probation compliance of a supervised individual.

Section 1. Definitions. (1) **"Case plan" is defined in KRS 446.010(6).**

(2) "Officer" or "probation and parole officer" means a person employed by the Department of Corrections Division of Probation and Parole who supervises, counsels, and directs an offender on probation or parole.

(3) "Probationer" means a person who has been sentenced to probation and ordered by a court with jurisdiction over the sentence to be supervised by the Department of Corrections;

(4)[~~(2)~~**]** "Risk and needs assessment" is defined in KRS 446.010(35).

(5) "Violent offense" is defined in KRS 439.3401(1).[~~(3) "Officer" or "probation and parole officer" means a person employed by the Department of Corrections Division of Probation and Parole who supervises, counsels, and directs an offender on probation or parole.~~

~~(4) "Case plan" is defined in KRS 446.010(6).~~**]**

Section 2. Review of Compliance of a Supervised Individual. (1) Timing of compliance review. The compliance review shall be conducted **when[**~~at the time that~~**]** the probationer has a risk and needs reassessment pursuant to KRS 439.552 and 501 KAR **6:280[**~~6:020~~**]**, incorporating by reference CPP **29.1[**~~12.1~~**]**.

(2) Arrests. The officer supervising a probationer shall determine if the probationer has had any new arrests during the period of supervision. If the probationer has had an arrest, then the probationer shall not:

(a) Be eligible for recommendation of early termination of probation pursuant to KRS 439.552; **and[**~~or~~**]**

(b) Be reviewed again for recommendation of early termination of probation.

(3) Reduction in risk factors. The officer supervising a probationer shall review the results of the most recent risk and needs assessment to determine whether there has been a reduction in the probationer's risk factors.

(4) Restitution and financial obligations. The officer supervising a probationer shall verify whether the probationer has:

(a) Satisfied all court ordered restitution; and

(b) Paid all other court ordered financial obligations at a minimum in the following manner:

1. Paid at least ninety (90) percent of a lump sum obligation; and

2. Shall not be more than one payment behind in scheduled payment obligations, including **[**~~but not limited to~~**]** court ordered child support obligations, supervision fees,**[**~~and~~**]** drug testing fees**, or other similar payments**.

(5) Case plan. The officer supervising a probationer shall review a probationer's case plan to determine if the probationer has met the requirements of the plan during the period of supervision **as** required in KRS 439.552(1)(a)1.

(6) Time on supervision. The officer supervising a probationer shall review the probationer's time on supervision to determine if the probationer has spent a minimum of eighteen **(18)** months on supervision.

(7) Supervision compliance. The officer supervising a probationer shall review the probationer's compliance with the terms of supervision to determine if the probationer has a minimum of **the last** twelve **(12)** months without violations.

Section 3. Recommendation to Court of Early Termination of Probation. **[**~~(1)~~**]** If the probationer meets the requirements of KRS 439.552(1)(a) and (2) and Section 2 of this administrative regulation **and an override pursuant to Section 4 of this administrative regulation is not used**, then the officer shall submit to the releasing court a report that shall include**[**~~but not be limited to~~**]** the following:

(1)[~~(a)~~**]** A description of the probationer's progress while under supervision including compliance with the regular conditions of supervision;

(2)[~~(b)~~**]** Specific information related to the completion of any special conditions ordered by the releasing court;

(3)[~~(c)~~**]** Other relevant information regarding compliance with court ordered conditions of supervision and community stability issues; and

(4) A request[~~(d) Whether the officer recommends that the court consider the probationer~~**]** for early termination of probation.

Section 4. Override. (1) If the officer has reason to believe that a probationer poses a significant risk to recidivate if the supervision is terminated early, the officer shall consult with the District Supervisor or designee and a decision may be made to issue an override.

(2) Override factors. Override factors for consideration **shall[**~~may~~**]** include the following:

(a) High risk on risk and needs assessment;

(b) Very high risk on risk and needs assessment;

(c) Convicted of violent offense;

(d) Prior violent offense conviction;

(e) Pending charge against probationer;

(f) Pending or current emergency protective order (EPO);

(g) Pending or current domestic violence order (DVO); or

(h) Other factors of similar magnitude.

(3) If a decision is made to issue an override, then **at least one (1) factor in subsection (2) of this section shall be identified in the decision and** a recommendation for early termination shall not be made to the court.

(4) An override shall be documented in the offender management system.

Section 5. Subsequent Review of Probationers Not Recommended for or Granted Early Termination of Probation. (1) If the probationer is not eligible for a recommendation for early termination from probation due to the failure to meet one or more requirements, with the exception of arrest, the officer shall review the probationer for a possible recommendation **when[**~~at the time that~~**]** the probationer has a risk and needs reassessment pursuant to

KRS 439.552 and 501 KAR **6:280[**~~6:020~~**]**, incorporating by reference CPP **29.1[**~~12.1~~**]**.

(2) If the probationer is recommended for early termination of probation, but the court does not grant the early termination, the officer shall review the probationer for a possible recommendation **when[**~~at the time that~~**]** the probationer has a risk and needs reassessment pursuant to KRS 439.552 and 501 KAR **6:280[**~~6:020~~**]**, incorporating by reference CPP **29.1[**~~12.1~~**]**.

Section 6. Case Closure. If the court approves the recommendation for early termination of probation, the department shall discontinue supervision and close its probation case.

LADONNA H. THOMPSON, Commissioner
APPROVED BY AGENCY: December 11, 2011
FILED WITH LRC: April 13, 2012 at 11 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
DEPARTMENT OF CORRECTIONS
(As Amended at ARRS, July 10, 2012)

501 KAR 6:280. Risk and needs assessment.

RELATES TO: KRS 196.035, 197.020, 439.265, 439.3101, 439.3104, 439.3105, 439.331, 439.348, 439.480, 446.010, 533.030
STATUTORY AUTHORITY: KRS 197.020, 439.3101, 439.3104, 439.331
NECESSITY, FUNCTION, AND CONFORMITY: KRS 197.020(1)(d), 439.3101(2)(a), **439.3104(1) and (2), and 439.331(1)[**~~439.331(1), 439.3104(1) and (2)~~**]** require the Department of Corrections to promulgate an administrative regulation for the administration of a validated risk and needs assessment to assess the criminal risk factors and correctional needs of all inmates and offenders upon commitment to the department. This administrative regulation establishes the validated risk and needs assessment requirements for assessing the criminal risk factors and correctional needs of inmates and offenders.

Section 1. Incorporation by Reference. (1) "Department of Corrections policies and procedures for risk and needs assessment," **July 10[**~~April 13~~**]**, 2012, are incorporated by reference. These policies and procedures include:

29.1[~~12.1~~**]** Risk and Needs Assessment **(7/10/12)[**~~(4/13/12)~~**]**
29.2[~~12.2~~**]** Case Planning **(7/10/12)[**~~(4/13/12)~~**]**
29.3[~~12.3~~**]** Risk and Needs Assessment Administration, Training, and Quality Assurance **(7/10/12)[**~~(4/13/12)~~**]**

(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: April 5, 2012
FILED WITH LRC: April 13, 2012 at 11 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.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(As Amended at ARRS, July 10, 2012)

803 KAR 2:313. Materials handling and storage.

RELATES TO: KRS 338.051(3), 338.061, 29 C.F.R. **1910.176-1910.184[**~~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 **establishes[**~~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. **If[**~~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.
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.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(As Amended at ARRS, July 10, 2012)

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 capa-

ble 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 manufactured, processed, used, repackaged, released, stored, or otherwise handled.

(b) Incidents. Incidents that result in the release of 4,4'-Methylene bis (2-chloroaniline) into any area where employees may be exposed shall be reported in accordance with this paragraph.

1. A report of the incident and the facts obtainable at that time, including a report on any medical treatment of affected employees, shall be made within twenty-four (24) hours to the nearest Area Director.

2. A written report shall be filed with the nearest Area Director within fifteen (15) calendar days of the initial report and shall include:

a. A specification of the amount of material released, the amount of time involved, and an explanation of the procedure used in determining this figure;

b. A description of the area involved, and the extent of known and possible employee and area contamination;

c. A report of any medical treatment of affected employees and any medical surveillance program implemented; and

d. An analysis of the steps to be taken, with specific completion dates, to avoid further similar release.

(6) Medical surveillance. At no cost to the employee, a program of medical surveillance shall be established and implemented for employees considered for assignment to enter regulated areas, and for authorized employees.

(a) Examinations.

1. Before an employee is assigned to enter a regulated area, a preassignment physical examination by a physician shall be provided. The examination shall include the personal history of the employee, family and occupational background, including genetic and environmental factors.

2. Authorized employees shall be provided with periodic physical examinations at least annually, following the preassignment examination.

3. In all physical examinations, the examining physician shall consider whether there exist conditions of increased risk, including reduced immunological competence, current treatment with steroids of cytotoxic agents, pregnancy, and cigarette smoking.

(b) Records.

1. Employers of employees examined pursuant to this subsection shall maintain complete and accurate records of all medical

examinations. Records shall be maintained for the duration of the employee's employment. If the employee's employment is terminated, including by retirement or death, or if the employer ceases business without a successor; records, or notarized true copies thereof, shall be forwarded by registered mail to the director.

2. Records required by this paragraph shall be provided if requested by authorized representatives of the assistant secretary or the director. If requested by an employee or former employee, the records shall be provided to a physician designated by the employee or to a new employer.

3. Any physician who conducts a medical examination required by this subsection shall furnish to the employer a statement of the employee's suitability for employment in the specific exposure.

Section 3. Laboratory Activities. The requirements of this section shall apply to research and quality control activities involving the use of chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016. (1) Mechanical pipetting aids shall be used for all pipetting procedures.

(2) Experiments, procedures, and equipment which could produce aerosols shall be confined to laboratory-type hoods or glove boxes.

(3) Surfaces on which chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016 are handled shall be protected from contamination.

(4) Contaminated wastes and animal carcasses shall be collected in impervious containers that are closed and decontaminated prior to removal from the work area. The wastes and carcasses shall be incinerated so that carcinogenic products shall not be released.

(5) All other forms of chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016 shall be inactivated prior to disposal.

(6) Laboratory vacuum systems shall be protected with high-efficiency scrubbers or with disposal absolute filters.

(7) Employees engaged in animal support activities shall be:

(a) Provided with and required to wear, a complete protective clothing change, clean each day, including coveralls, or pants and shirt, foot covers, head covers, gloves, and appropriate respiratory protective equipment or devices;

(b)1. **Required, prior to each exit from a regulated area,[**~~Prior to each exit from a regulated area, required~~**]** to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for decontamination or disposal; and

2. The contents of the impervious containers shall be identified as required under Section 2(4)(b), (c), and (d) of this administrative regulation;

(c) Required to wash hands, forearms, face, and neck upon each exit from the regulated area close to point of exit, and before engaging in other activities; 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.

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.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(As Amended at ARRS, July 10, 2012)

803 KAR 2:405. Fire protection and prevention.

RELATES TO: KRS 338.051(3), 338.061, **29 C.F.R. 1926[**~~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 **require[**~~authorize~~**]** the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. **This[**~~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 **establishes[**~~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.
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.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(As Amended at ARRS, July 10, 2012)

803 KAR 2:407. Adoption of 29 C.F.R. Part 1926.250-252.

RELATES TO: KRS Chapter 338**, 29 C.F.R. Part 1926.250-1926.252**
STATUTORY AUTHORITY: KRS 338.051, 338.061
NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health**[**~~rules and~~**]** administrative regulations**[**~~, and standards~~**]**. **This[**~~The following~~**]** administrative regulation **establishes[**~~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.~~]

MARK S. BROWN, Chairman
APPROVED BY AGENCY: May 8, 2012
FILED WITH LRC: May 11, 2012 at 2 p.m.
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.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and health Compliance
Division of Occupational Safety and Health Education and Training
(As Amended at ARRS, July 10, 2012)

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.~~] **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 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.

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.

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, July 10, 2012)

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 **a** training center **as described in KRS 230.260(5)**[~~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 approved licensed veterinarian shall agree to comply with all of the applicable administrative regulations regarding the administration of furosemide on race day[**~~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 **an approved licensed veterinarian[**~~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) **The initial cost of administering the furosemide shall be twenty (20) dollars per administration. The commission shall monitor the costs associated with administering furosemide and consult with industry representatives to determine if the cost should be lowered based on prevailing veterinarian services and supplies.[**~~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 if the cost is determined to be less than twenty (20) dollars per administration, then the commission shall lower the cost accordingly.[**~~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 **will[**~~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 **if[**~~when~~**]** notice is made pursuant to this section that a horse **will[**~~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) **NSAIDS[**No NSAID**]**, including[One (1) of] the permitted NSAIDs**.**[or any other NSAID] shall **not**[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 pre-

scribed 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.

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PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, July 10, 2012)

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**, 230.320**[~~(3), EO 2008-668~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS **230.260(8)[**~~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 **a**[~~the horse had~~] Class A, B, or C drug **violation, or a total carbon dioxide (TC02)**[~~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 **paragraphs (a) through (d) of this subsection,[**~~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 (11-49ng/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. **The penalties established in 810 KAR 1:110, Section 8, shall apply to violations involving the prohibited substances and practices described in Section 2 of that administrative regulation.[**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:

(1)[~~(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;

(2)[~~(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~~]

(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 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)[~~(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:

(1)[~~(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;

(2)[~~(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~~]

(3)[~~(c)~~**]** Eject or exclude persons from association grounds for a length of time the commission deems necessary; or[~~.~~]

(4)[~~(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.

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PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, July 10, 2012)

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 **a** training center **as described in KRS 230.260(5)**[~~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 **Sections 4, 5, 6, and 8 of** 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 approved licensed veterinarian shall agree to comply with all of the applicable administrative regulations regarding the administration of furosemide on race day[**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 **an approved licensed veterinarian[**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 circumstanc-

es:

(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) **The initial cost of administering the furosemide shall be twenty (20) dollars per administration. The commission shall monitor the costs associated with administering furosemide and consult with industry representatives to determine if the cost should be lowered based on prevailing veterinarian services and supplies.[**~~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, plasma, 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 if the cost is determined to be less than twenty (20) dollars per administration, then the commission shall lower the cost accordingly.[**~~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 **will[**~~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 **if[**~~when~~**]** notice is made pursuant to this section that a horse **will[**~~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 intrave-

nously, 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 temporarily 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 pro-

vide 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 collection 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.

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PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, July 10, 2012)

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**, 230.320**[~~(3), EO 2008-668~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and **230.260(8)[**~~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 trans-~~

~~ferred 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 administrative 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 **if the post-race test indicates a Class A, B, or C drug violation, or a TCO2 level exceeding 37.0 millimoles per liter[**~~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 considered 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~~] revoca-

tion[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. **The penalties established in 811 KAR 1:240, Section 8, shall apply to violations involving the prohibited substances and practices described in Section 2 of that administrative regulation.[**~~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 **or for** the inactive person or **an 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, to-

gether 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.

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PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amended at ARRS, July 10, 2012)

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 **a** training center **as described in KRS 230.260(5).**

(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 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 approved licensed veterinarian shall agree to comply with all of the applicable administrative regulations regarding the administration of furosemide on race day[**~~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 **an approved licensed veterinarian[**~~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) **The initial cost of administering the furosemide shall be twenty (20) dollars per administration. The commission shall monitor the costs associated with administering furo-**

semide and consult with industry representatives to determine if the cost should be lowered based on prevailing veterinarian services and supplies.[~~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 if the cost is determined to be less than twenty (20) dollars per administration, then the commission shall lower the cost accordingly.[**~~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 **will[**~~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 **if[**~~when~~**]** notice is made pursuant to this section that a horse **will[**~~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) **NSAIDs[**~~No NSAID~~**]**, including the permitted NSAIDs**,** shall **not** 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 Re-~~

~~search 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.
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.

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, July 10, 2012)

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**, 230.320**[~~KRS Chapter 13A~~]
NECESSITY, FUNCTION, AND CONFORMITY: KRS **230.260(8)[**~~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 **a[**~~the horse had~~**]** Class A, B, or C **drug violation, or a total carbon dioxide (TCO2)[**~~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 **paragraphs (a) through (d) of this subsection,[**~~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 (11-49ng/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 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) 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. **The penalties established in 811 KAR 2:150, Section 8, shall apply to violations involving the prohibited substances and practices described in Section 2 of that administrative regulation.**[~~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 **or for** the inactive person or **an** 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.

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ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR RECEIPT OF WRITTEN COMMENTS

NONE

PROPOSED AMENDMENTS

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:230. Renewal of licenses.

RELATES TO: KRS 314.041, 314.051, 314.071, 314.073
STATUTORY AUTHORITY: KRS 314.131(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the board to promulgate administrative regulations to implement the provisions of KRS Chapter 314. This administrative regulation establishes requirements and procedures for the renewal of licenses.

Section 1. Eligibility for Renewal of Licenses. To be eligible for renewal of licenses, applicants shall:
(1) Hold a valid and current license issued by the board;
(2) Submit a completed application form as required by 201 KAR 20:370, Section 1(1), to the board office, postmarked no later than the last day of the licensure period;
(3) Submit the current fee required by 201 KAR 20:240;
(4) Have met requirements of 201 KAR 20:215, if applicable;
(5) Submit certified copies of court records of any misdemeanor or felony convictions with a letter of explanation;
(6) Submit certified copies of any disciplinary actions taken in other jurisdictions with a letter of explanation or report any disciplinary action pending on nursing or other professional or business licenses in other jurisdictions; and
(7) Have paid all monies due to the board.

Section 2.[~~An applicant shall be exempt from meeting the continuing competency requirements of 201 KAR 20:215 if renewing for the first time:~~
~~(1) An original Kentucky license issued by examination or endorsement; or~~
~~(2) A license that has been reinstated pursuant to 201 KAR 20:225. Section 3~~.] The licensure period for renewal of licenses shall be as specified in 201 KAR 20:085.

CAROL KOMARA, President
APPROVED BY AGENCY: June 15, 2012
FILED WITH LRC: June 20, 2012 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 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 August 20, 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 August 31, 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 sets out procedures and requirements for renewal of licenses.
(b) The necessity of this administrative regulation: It is required by statute
(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting out procedures and requirements.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting out procedures and requirements.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The section concerning the exemption from continuing education for those renewing for the first time is being deleted.
(b) The necessity of the amendment to this administrative regulation: The authorizing statute was amended to remove this exemption.
(c) How the amendment conforms to the content of the authorizing statutes: By deleting the exemption.
(d) How the amendment will assist in the effective administration of the statutes: It will be in conformity with the statute.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Nurses renewing licenses for the first time, number unknown.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:
They will have to earn the required continuing education.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): They will have to pay for their own continuing education courses, although many employers offer free CE to their employees.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the statute and 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 20:370. Applications for licensure.

RELATES TO: KRS 314.041, 314.042, 314.051, 314.071, 314.091

STATUTORY AUTHORITY: KRS 314.041, 314.051, 314.071, 314.131(1)

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. 314.041, 314.051, and 314.071 require the board to review an application for licensure and a licensee for conformity with KRS Chapter 314. This administrative regulation establishes requirements and procedures for licensure.

Section 1. To be eligible for licensure by examination, endorsement, renewal, reinstatement, retired licensure status, or for advanced practice registered nurse licensure, renewal, or reinstatement, an applicant shall:

(1) Submit the appropriate completed application form to the board office, as follows:

(a) For RN or LPN licensure by examination, endorsement, or reinstatement, "Application for Licensure";

(b) For RN or LPN Renewal, "Annual Licensure Renewal Application: RN or LPN";

(c) For licensure or reinstatement as an advanced practice registered nurse, "Application for Licensure as an Advanced Practice Registered Nurse";

(d) [~~For renewal as an advanced practice registered nurse, "APRN Licensure Renewal Application"; (e)~~] For renewal as an RN and an APRN, "Annual Licensure Renewal Application: RN and APRN";

(e)[~~(f)~~] For licensure as an RN and as an APRN, "Application for RN and APRN Licensure";

(f)[~~(g)~~] For retired licensure status, "Application for Retired Status"; [~~or~~]

(g)[~~(h)~~] For APRN renewal with an RN Compact license, "Annual [~~APRN~~] Licensure Renewal Application:[~~for~~] APRN with RN Compact License (not Kentucky)"; or

(h) In addition to any other renewal form, for APRN renewal, "APRN Practice Data";

(2) Submit the current application fee, as required by 201 KAR 20:240;

(3) Submit a certified copy of the court record of each misdemeanor or felony conviction in this or any other jurisdiction and a letter of explanation that addresses each conviction, except for traffic-related misdemeanors (other than DUI) or misdemeanors older than five (5) years;

(4) Submit a certified copy of a disciplinary action taken in another jurisdiction with a letter of explanation or report a disciplinary action pending on a nurse licensure application or license in another jurisdiction;

(5) Have paid all monies due to the board;

(6) Submit a copy of an official name change document (court order, marriage certificate, divorce decree, Social Security card), if applicable;

(7) Submit additional information as required by the board in 201 KAR Chapter 20;

(8) Meet the additional requirements for:

(a) Licensure by examination established by 201 KAR 20:070;

(b) Licensure by endorsement established by 201 KAR 20:110;

(c) Licensure by reinstatement established by 201 KAR 20:225;

(d) Licensure by renewal established by 201 KAR 20:230;

(e) Retired nurse or inactive licensure status established by 201 KAR 20:095; or

(f) Advanced practice registered nurse licensure, renewal, or reinstatement established by 201 KAR 20:056;

(9) If not a citizen of the United States, maintain proof of legal permanent or temporary residency under the laws and regulations of the United States; and

(10) Notify the board upon establishment of a new mailing address.

Section 2. A completed renewal application form and all information needed to determine that an applicant meets the requirements for renewal of licensure shall be postmarked or received by the board no later than the last day for renewal of license.

Section 3. An application shall lapse and the fee shall be forfeited if the application is not completed as follows:

(1) For an application for licensure by endorsement, within six (6) months from the date the application form is filed with the board office;

(2) For an application for licensure by examination, within one (1) year from the date the application form is filed with the board office or the date the applicant fails the examination, whichever comes first; or

(3) For all other applications except renewal of license applications, within one (1) year from the date the application form is filed with the board office.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Licensure", 6/2011, Kentucky Board of Nursing;

(b) "Annual Licensure Renewal Application: RN or LPN", 6/2012[~~6/2010~~], Kentucky Board of Nursing;

(c) "Application for Licensure as an Advanced Practice Registered Nurse", 6/2011, Kentucky Board of Nursing;

(d) "Annual Licensure Renewal Application: RN and APRN", 6/2012[~~6/2010~~], Kentucky Board of Nursing;

(e) "Application for RN and APRN Licensure", 6/2011, Kentucky Board of Nursing;

(f) "Application for Retired Status", 8/2004, Kentucky Board of Nursing;[~~and~~]

(g) "Annual[~~APRN~~] Licensure Renewal Application:[~~for~~] APRN with RN Compact License (not Kentucky)", 6/2012[~~6/2010~~], Kentucky Board of Nursing; and

(h) "APRN Practice Data", 6/2012, Kentucky Board of Nursing.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

CAROL KOMARA, President

APPROVED BY AGENCY: June 15, 2012

FILED WITH LRC: June 20, 2012 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 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 August 20, 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 August 31, 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 primarily incorporates all licensure applications and matters related to the applications.

(b) The necessity of this administrative regulation: KRS Chapter13A requires applications to be incorporated by reference.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By incorporating the applications.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By incorporating the applications.

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

(a) How the amendment will change this existing administrative regulation: Several applications are being amended.

(b) The necessity of the amendment to this administrative regulation: These applications have new questions being added and parts deleted.

(c) How the amendment conforms to the content of the authorizing statutes: By incorporating a current version of the affected applications.

(d) How the amendment will assist in the effective administration of the statutes: By incorporating a current version of the affected applications.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for various nursing licensure, number unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will utilize the new version of the application.

(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 20:411. Sexual Assault Nurse Examiner Program standards and credential requirements.

RELATES TO: KRS 216B.400(2), 314.142, 314.470, 421.500-421.550

STATUTORY AUTHORITY: KRS 314.131(1), 314.142(1)

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. 314.142(1) requires the board to promulgate administrative regulations to create a Sexual Assault Nurse Examiner Program. This administrative regulation establishes the requirements relating to a sexual assault nurse examiner course and the credentials of a sexual assault nurse examiner.

Section 1. Definition. "SANE course" means a formal, organized course of instruction that is designed to prepare a registered nurse to perform forensic evaluation of a sexual assault victim fourteen (14) years of age or older and to promote and preserve the victim's biological, psychological, and social health.

Section 2. SANE Course Approval Application. On the form "Application for Initial or Continued SANE Course Approval", the applicant for approval of a SANE course shall submit evidence of:

(1) Nurse administrator of SANE course. A registered nurse, with current, active Kentucky licensure or a multistate licensure privilege pursuant to KRS 314.470, a baccalaureate or higher degree in nursing, and experience in adult and nursing education shall be administratively responsible for assessment, planning,

development, implementation, and evaluation of the SANE course.

(2) Faculty qualifications. The course shall be taught by multidisciplinary faculty with documented expertise in the subject matter. The name, title, and credentials identifying the educational and professional qualifications for each instructor shall be provided.

(3) Course syllabus. The syllabus shall include:

(a) Course prerequisites, requirements, and fees.

(b) Course outcomes. The outcomes shall provide statements of observable competencies, which if taken as a whole, present a clear description of the entry level behaviors to be achieved by the learner.

(c) Unit objectives. Individual unit objectives shall be stated in operational or behavioral terms with supportive content identified.

(d) Content. The content shall be described in detailed outline format with corresponding lesson plans and time frame. The content shall be related to, and consistent with, the unit objectives, and support achievement of expected course outcomes.

1. The SANE course shall include:

a. A minimum of forty (40) hours of didactic instruction pursuant to subparagraph 3 of this paragraph; and

b. The clinical practice experience required by subparagraph 2 of this paragraph.

2. Clinical practice. The clinical portion of the course shall be a minimum of sixty (60) hours and shall include:

a. Supervised detailed genital inspection, speculum examination, visualization techniques, and equipment - twenty six (26) hours.

b. Supervised mock sexual assault history taking and examination techniques with evaluation - ten (10) hours.

c. Observing relevant civil or criminal trials, meeting with Commonwealth Attorney, or similar legal experience - sixteen (16) hours.

d. Meeting with rape crisis victim advocate or mental health professional with expertise in the treatment of sexual assault individuals - four (4) hours.

e. Meeting with members of law enforcement - four (4) hours.

3. The didactic portion of the course shall include instruction in the following topics related to forensic evaluation of individuals reporting sexual assault:

a. The role and responsibilities of a sexual assault nurse examiner, health care professional, rape crisis, law enforcement, and judicial system personnel;

b. Application of the statewide medical protocol relating to the forensic and medical examination of individuals reporting sexual assault pursuant to KRS 216B.400 (2);

c. Principles and techniques of evidence identification, collection, evaluation, preservation and chain of custody;

d. Assessment of injuries, including injuries of forensic significance;

e. Physician consultation and referral;

f. Medicolegal documentation;

g. Victim's bill of rights, KRS 421.500 through 421.550;

h. Crisis intervention;

i. Dynamics of sexual assault;

j. Testifying in court;

k. Overview of the criminal justice system and related legal issues;

l. Available community resources including rape crisis centers;

m. Historical development of forensic nursing conceptual model;

n. Cultural diversity and special populations;

o. Ethics;

p. Genital anatomy, normal variances, and development stages;

q. Health care implications and interventions; and

r. Developing policies and procedures.

(e) Teaching methods. The activities of both instructor and learner shall be specified in relation to content outline. These activities shall be congruent with stated course objectives and content, and reflect application of adult learning principles.

(f) Evaluation. There shall be clearly defined methods for evaluating the learner's achievement of course outcomes. There shall also be a process for annual course evaluation by students, providers, faculty, and administration.

(g) Instructional or reference materials. All required instructional materials and reference materials shall be identified.

(4) Completion requirements. Requirements for successful completion of the SANE course shall be clearly specified and shall include demonstration of clinical competency. A statement of policy regarding a candidate who fails to successfully complete the course shall be included.

Section 3. (1) Contact hour credit for continuing education. The SANE course shall be approved for contact hour credit which may be applied to licensure requirements.

(2) Approval period. Board approval for a SANE course shall be granted for a four (4) year period.

(3) Records shall be maintained for a period of five (5) years, including the following:

(a) Provider name, date, and site of the course; and

(b) Participant roster, with a minimum of names, Social Security numbers, and license numbers.

(4) A participant shall receive a certificate of completion that documents the following:

(a) Name of participant;

(b) Title of course, date, and location;

(c) Provider's name; and

(d) Name and signature of authorized provider representative.

Section 4. Continued Board Approval of a SANE Course. (1) An application for continued approval of a SANE course shall be submitted at least three (3) months prior to the end of the current approval period.

(2) A SANE course syllabus shall be submitted with the "Application for Initial or Continued SANE Course Approval".

(3) Continued approval shall be based on the past approval period performance and compliance with the board standards described in this administrative regulation.

Section 5. The board may deny, revoke, or suspend the approval status of a SANE course for violation of this administrative regulation.

Section 6. Appeal. If a SANE course administrator is dissatisfied with a board decision concerning approval and wishes a review of the decision, the following procedure shall be followed:

(1) A written request for the review shall be filed with the board within thirty (30) days after the date of notification of the board action which the SANE course administrator contests.

(2) The board, or its designee, shall conduct a review in which the SANE course administrator may appear in person and with counsel to present reasons why the board's decision should be set aside or modified.

Section 7. Requirements for Sexual Assault Nurse Examiner (SANE) Credential. (1) The applicant for the SANE credential shall:

(a) Hold a current, active registered nurse license in Kentucky or a multistate licensure privilege pursuant to KRS 314.470;

(b) Have completed a board approved SANE educational course or a comparable course. The board or its designee shall evaluate the applicant's course to determine its course comparability. The board or its designee shall advise an applicant if the course is not comparable and specify what additional components shall be completed to allow the applicant to be credentialed;

(c) If the applicant has completed a comparable course, complete that portion of a SANE course of at least five (5) hours which shall include those topics specified in Section 2(3)(d)3a, b, c, g, k, and l of this administrative regulation if not included in the comparable course. The Office of the Attorney General may offer in cooperation with a board approved continuing education provider a course of at least five (5) hours to include those topics specified in this paragraph;

(d) Complete the "Sexual Assault Nurse Examiner Application for Credential";

(e) Pay the fee established in 201 KAR 20:240;

(f) Provide a completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI that is within six (6) months of the date of the application;

(g) Provide a report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application;

(h) Provide a certified copy of the court record of any misdemeanor or
felony conviction as required by 201 KAR 20:370, Section 1(3); and

(i) Provide a letter of explanation that addresses each conviction, if applicable.

(2) Upon completion of the application process, the board shall issue the SANE credential for a period ending October 31.

(3) An applicant shall not be credentialed until a report is received from the FBI pursuant to the request submitted under subsection (1)(f) of this section and any conviction is addressed by the board.

Section 8. Renewal. (1) To renew the SANE credential for the next period, each sexual assault nurse examiner shall complete at least five (5) contact hours of continuing education related to the role of the sexual assault nurse examiner within each continuing education earning period. A provider of a board approved SANE course may offer continuing education related to the role of the sexual assault nurse examiner.

(2) Upon completion of the required continuing education, completion of the "SANE Renewal Application" or "Annual Credential Renewal Application: SANE with RN Compact License (Not Kentucky)", as applicable, and payment of the fee established in 201 KAR 20:240, the SANE credential shall be renewed at the same time the registered nurse license is renewed.

(3) The five (5) contact hours may count toward the required contact hours of continuing education for renewal of the registered nurse license.

(4) Failure to meet the five (5) contact hour continuing education requirement shall cause the SANE credential to lapse.

Section 9. Reinstatement. (1) If the SANE credential has lapsed for a period of less than four (4) consecutive registered nurse licensure periods, the individual may reinstate the credential by:

(a) Submitting the "Application for SANE Credential";

(b) Paying the fee established in 201 KAR 20:240;

(c) Submitting evidence of earning the continuing education requirement for the number of registered nurse licensure periods since the SANE credential lapsed;

(d) Providing a completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI that is within six (6) months of the date of the application;

(e) Providing a report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application;

(f) Providing a certified copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and

(g) Providing a letter of explanation that addresses each conviction, if applicable.

(2) An applicant shall not be credentialed until a report is received from the FBI pursuant to the request submitted under subsection (1)(d) of this section and any conviction is addressed by the board.

(3) If the SANE credential has lapsed for more than four (4) consecutive licensure periods, the nurse shall complete a SANE course prior to reinstatement.

Section 10. The board shall obtain input from the Sexual Assault Response Team Advisory Committee concerning any proposed amendment to this administrative regulation as follows:

(1) The board shall send a draft copy of any proposed amendment to the co-chairs of the Sexual Assault Response Team Advisory Committee prior to adoption by the board;

(2) The board shall request that comments on the proposed amendment be forwarded to the board's designated staff person within ninety (90) days; and

(3) At the conclusion of that time period or upon receipt of comments, whichever is sooner, the board, at its next regularly-scheduled meeting, shall consider the comments.

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

(a) "Application for Initial or Continued SANE Course Approval", 6/97, Kentucky Board of Nursing;

(b) "Sexual Assault Nurse Examiner Application for Credential", 6/2010, Kentucky Board of Nursing;

(c) "SANE Renewal Application", 6/2012[~~4/2007~~], Kentucky Board of Nursing; and

(d) "Annual[~~SANE~~] Credential Renewal Application: SANE with[~~for~~] RN Compact License (Not Kentucky)", 6/2012[~~4/2007~~], Kentucky Board of Nursing.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222-5172, Monday through Friday, 8:30 a.m. to 4:30 p.m.

CAROL KOMARA, President

APPROVED BY AGENCY: June 15, 2012

FILED WITH LRC: June 20, 2012 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 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 August 20, 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 August 31, 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 sets standards for the Sexual Assault Nurse Examiner program and also sets SANE credential requirements.

(b) The necessity of this administrative regulation: It is required by statute

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting standards and requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting standards and requirements.

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

(a) How the amendment will change this existing administrative regulation: Several applications are being amended.

(b) The necessity of the amendment to this administrative regulation: These applications have new questions being added and parts deleted.

(c) How the amendment conforms to the content of the authorizing statutes: By incorporating a current version of the affected applications.

(d) How the amendment will assist in the effective administration of the statutes: By incorporating a current version of the affected applications.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for SANE credential, number unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:
They will utilize the new version of the application.

(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:

CABINET FOR ECONOMIC DEVELOPMENT
Kentucky Economic Development Finance Authority
(Amendment)

307 KAR 4:020. Kentucky Enterprise Initiative Act.

RELATES TO: KRS 154.31 [~~154.20-033(2)~~]
STATUTORY AUTHORITY: KRS 154.20-33, 154.31-030[~~154.20-033(2), 154.20-200~~]

NECESSITY, FUNCTION AND CONFORMITY: KRS 154.31-030[~~154.20-202(1).~~] requires that the Kentucky Economic Development Finance Authority promulgate administrative regulations for approving eligible companies pursuant to[~~the Kentucky Enterprise Initiative Act,~~] KRS 154.31[~~154.20-200-154.20-216~~]. This administrative regulation establishes the approval process.

Section 1. Definitions. (1)["~~Act" means KRS 154.20-200-216.~~

~~(2)~~] "Authority" is defined in KRS 154.31-010(4)[~~154.20-200(5)~~].

(2) "Fixtures" means things which:

(a) Are accessory to a building and do not lose their identity as accessories but which do become a permanent part of the realty; and

(b) Are similar to the examples provided in 103 KAR 26:070, Section 2(4).

(3) "KEIA" means KRS 154.31.

(4) "Materials" means all of the tangible personal property, other than fixtures, which:

(a) Enters into and becomes a permanent part of a structure; and

(b) Are similar to the examples provided in 103 KAR 26:070, Section 2(3)[~~(3) "Building and construction materials" means all of the tangible personal property, other than fixtures, that becomes physically incorporated as a permanent part of the structure or is consumed or expended in the construction. Examples of materials are: bricks, builders hardware, cement, gravel, sand, macadam, asphalt, lumber, electrical wiring, wall board and coping, roofing, guttering, aluminum siding, storm doors and windows, and cabinets.~~

~~(4) "Building fixtures" means items that are attached to, or incorporated into, a building without becoming a structural component of the building. Examples of fixtures are: lighting fixtures, plumbing fixtures, hot water heaters, furnaces, boilers, central heating units, elevators, hoists, burglar and fire alarm systems, central air conditioning, built-in refrigeration units, built-in oven-ranges and dishwashers, and cabinets~~].

Section 2. Application Process. (1) In addition to the information required by KRS 154.31-030(3)[~~154.20-202(3)~~], a company seeking approval for inducements under KEIA[~~the Act~~], KRS 154.31, shall submit the appropriate application and other documentation required by 307 KAR 1:005[~~an Application to the Authority that contains the following information:~~

~~(a) An executed original of the Cabinet for Economic Development Economic Incentive Disclosure Statement;~~

~~(b) A copy of the company's financial statement for the most current fiscal year end;~~

~~(c) A brief description of the economic development project;~~

~~(d) An executed original of the Application for the Kentucky Enterprise Initiative Act;~~

~~(e) A letter of support from the local county or municipal government; and~~

~~(f) A nonrefundable $500 application fee~~].

(2) The Authority may require from the applicant additional information that is necessary to evaluate the application.

Section 3. Approval. (1) The Authority shall review the application and determine whether or not to approve the application. The final determination shall be made at a regular or special session of the Authority.

(2) Prior to approval, the Authority and the approved company shall negotiate the terms and conditions of the inducements and enter into a written agreement setting forth their agreement, in accordance with KRS 154.31-030(4)[~~154.20-210~~].

(3) The Authority shall consider the applications in the order received and shall cease consideration of applications after the statutory total tax refund incentive available for commitment for the fiscal year has been reached.

(4) Applications which have not been acted upon by the Authority, received or on file after the statutory total tax refund incentive available for commitment for the fiscal year has been reached, shall be returned to the applicants.[~~Section 4. Incorporation by~~

~~Reference. (1) The follow material is incorporated by reference:~~

~~(a) "Application for Kentucky Enterprise Initiative Act Tax Credit Program (2/06)", and~~

~~(b) The "Cabinet for Economic Development Economic Incentive Disclosure Statement (07/02)".~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Economic Development, Department of Financial Incentives, Old Capitol Annex, 3rd Floor, 300 West Broadway, Frankfort, Kentucky 40601, ((502)564-7670) Monday through Friday, 8:00 a.m. to 4:30 p.m.~~]

JEAN HALE, Chairman
LARRY M. HAYES, Secretary

APPROVED BY AGENCY: May 31, 2012

FILED WITH LRC: June 15, 2012 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing of this administrative regulation shall be held on August 22, 2012, at 10:00 a.m. at the Cabinet for Economic Development, Old Capitol Annex, 300 West Broadway, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 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: Janine Coy-Geeslin, Staff Attorney, Cabinet for Economic Development, Old Capitol Annex, 300 West Broadway, Frankfort, Kentucky 40601, phone (502) 564-7670, fax (502) 564-1535.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What this administrative regulation does: This amended regulation eliminates the application by reference because the application for the Kentucky Enterprise Initiative Act ("KEIA") tax incentives created by KRS Subchapter 154.31 has been revised and attached to a proposed new regulation.

(b) The necessity of this administrative regulation: This amended regulation is necessary to eliminate the KEIA application because the Kentucky Economic Development Finance Authority (the "Authority") through the Cabinet for Economic Development (the "Cabinet") has revised their incentive program applications and will promulgate a new administrative regulation prescribing incentive applications, including the KEIA application.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 154.31-030 authorizes the Authority to establish procedures and standards for the application process for KRS 154.31 economic development incentives and promulgate regulations for this purpose. A new regulation will be promulgated prescribing applications for several of the Authority incentive programs, including the KEIA program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended regulation will assist the Authority and the Cabinet in administering the KEIA program in a more effective manner by revising the application to allow electronic signatures. This amended regulation is required by statute and provides a means to begin the application 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: This amended regulation eliminates the application by reference because the application has been revised and attached to a proposed new regulation. The updated application process will include the possibility of making application electronically.

(b) The necessity of the amendment to this administrative regulation: The application has been revised and attached to a proposed new regulation. Amending the regulation is necessary to move the revised application to a proposed new regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment provides for the statutorily authorized application process, as revised.

(d) How the amendment will assist in the effective administration of the statutes: The revised application conforms to the needs of the agency, consistent with the statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The affected entities include companies, businesses, and other entities considering economic development incentives under KRS Subchapter 154.31 as a source of funding for their economic development projects in the Commonwealth, the Cabinet and the Authority.

(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 sets forth the steps of the application process including a nonrefundable $500 application fee in order to qualify for submission to the Authority for consideration of approval and the approval process by the Authority. This amendment eliminates the application which is added to a new proposed regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment does not change the application fee from its present amount.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The application allows the project to become eligible for approval by the Authority. If the applicant project is approved by the Authority, the incentive amount approved will vary depending on the applicant's investment in their economic development project.

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

(a) Initially: The Cabinet has developed forms and processes. This amendment results in no change in the cost to the agency. As a greater number of companies are able to apply on line, the cost to the agency for printing and postage will be reduced. Administrative costs remain the same.

(b) On a continuing basis: See answer (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The application fee will provide some financial support, but general administration will have to be covered by existing operating funds from the general fund 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: This amendment does not alter the existing fee structure.

(8) State whether or not this administrative regulation establishes any fees or directly of indirectly increases any fees: The amended regulation continues the existing fee structure.

(9) TIERING: Is tiering applied? Tiering is not used as the application and all application fees are the same and apply to the same class of entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Contact Person: Janine Coy-Geeslin

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 department, or school districts) will be impacted by this administrative regulation? The Cabinet for Economic Development and the Kentucky Economic Development Finance Authority

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 154.20-033 and KRS 154.31-030.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of 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? Unknown.

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

(c) How much will it cost to administer this program for the first year? Cost for this amendment will not differ from current costs.

(d) How much will it cost to administer this program for subsequent years? Cost will depend on the number of applications and projects submitted, and whether the applications are submitted electronically.

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 ECONOMIC DEVELOPMENT
Kentucky Economic Development Finance Authority
(Amendment)

307 KAR 9:010. Application for Kentucky Reinvestment Act Program.

RELATES TO: KRS 154.20-033, 154.34-070

STATUTORY AUTHORITY: KRS 154.20-033, 154.34-070

NECESSITY, FUNCTION AND CONFORMITY: KRS 154.34-070 authorizes the Kentucky Economic Development Finance Authority to establish additional procedures and standards for the application process for KRS Chapter 154.34 economic development incentives. KRS 154.20-033(1)(b) and 154.34-070 authorize the Kentucky Economic Development Finance Authority to impose fees in conjunction with the application process. This administrative regulation establishes the application for the KRS Chapter 154.34 incentives and sets the fee structure.[~~NECESSITY, FUNCTION AND CONFORMITY: KRS 154.34-070 requires the Kentucky Economic Development Finance Authority to establish additional procedures and standards for the application process for KRS 154.34 economic development incentives. KRS 154.20-033 authorizes the Kentucky Economic Development Finance Authority to impose fees in conjunction with the application process. This administrative regulation adopts the application for the KRS 154.34 incentives and sets the fee structure.~~]

Section 1. [~~Definition. (1) "Application" means the form "Application for Kentucky Reinvestment Act (KRA) Program" with instructions. Section 2.~~] Application Process[~~Supplements~~]. In addition to the information required by KRS 154.34-070, the applicant shall provide:

(1) All information required by the Application for Kentucky Reinvestment Act (KRA)[~~which is incorporated by reference~~]; and

(2) An application fee in the amount of[~~$500 for applications submitted during the period July 2009 through December 2009, $750 for the period January 2010 through December 2010, and~~] $1,000 [~~beginning January 2011 and thereafter~~].

Section 2.[~~3.~~] Incorporation by Reference. (1) "Application for Kentucky Reinvestment Act (KRA)[~~Program~~]",[~~with instructions,~~] Rev 4/2012[~~July 30, 2009~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Economic Development, Department of Financial Incentives, Old Capitol Annex, 300 West Broadway, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m.

JEAN HALE, Chairman

LARRY M. HAYES, Secretary

APPROVED BY AGENCY: May 31, 2012

FILED WITH LRC: June 15, 2012 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing of this administrative regulation shall be held on August 22, 2012, at 10:00 a.m. at the Cabinet for Economic Development, Old Capitol Annex, 300 West Broadway, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 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: Janine Coy-Geeslin, Staff Attorney, Cabinet for Economic Development, Old Capitol Annex, 300 West Broadway, Frankfort, Kentucky 40601, phone (502) 564-7670, fax (502) 564-1535.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What this administrative regulation does: This amended regulation provides an updated application for the economic development tax incentive created by KRS Subchapter 154.34.

(b) The necessity of this administrative regulation: This regulation will provide a means for those applying for the economic development incentives created by KRS Subchapter 154.34.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 154.34-070 directs the Kentucky Economic Development Finance Authority (the "Authority") to promulgate a regulation for this purpose.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation is required by statute and will provide a means to begin the application 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: This amended regulation provides for an updated application process that includes the possibility of making application electronically.

(b) The necessity of the amendment to this administrative regulation: The application has been revised. Amending the regulation is necessary to adopt the revisions.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment provides for the statutorily authorized application process, as revised.

(d) How the amendment will assist in the effective administration of the statutes: The revised application conforms to the needs of the agency, consistent with the statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The affected entities include companies, businesses, and other entities considering economic development incentives as a source of funding for revitalizing their manufacturing operations in the Commonwealth, the Cabinet for Economic Development and the Authority.

(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 sets forth the application form and fees and sets forth supplemental information that may be required as part of the application. Therefore, the applicant will have to follow the steps of the application process, provide the supplemental documentation required, and pay the fee in order to qualify for submission to the Authority for consideration of approval.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is an application fee of $1,000. This amendment does not change the application fee from its present amount.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The application allows the project to become eligible for approval by the Authority. If the applicant project is approved by the Authority, the incentive amount approved will vary depending on investment in the Commonwealth and revenue of the applicant, but the inducements awarded will likely be significant relative to the size of the project.

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

(a) Initially: The Cabinet has developed forms and processes. This amendment results in no change in the cost to the agency. As a greater number of companies are able to apply on line, the cost to the agency for printing and postage will be reduced. Administrative costs remain the same.

(b) On a continuing basis: See answer (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The application fee will provide some financial support, but general administration will have to be covered by existing operating funds from the general fund 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: This amendment does not alter the existing fee structure.

(8) State whether or not this administrative regulation establishes any fees or directly of indirectly increases any fees: The amended regulation continues the existing fee structure.

(9) TIERING: Is tiering applied? Tiering is not used as the application and all application fees are the same and apply to the same class of entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire department, or school districts) will be impacted by this administrative regulation? The Cabinet for Economic Development and the Kentucky Economic Development Finance Authority

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 154.20-033 and KRS 154.34-070.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of 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? Unknown.

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

(c) How much will it cost to administer this program for the first year? Cost for this amendment will not differ from current costs.

(d) How much will it cost to administer this program for subsequent years? Cost will depend on the number of applications and projects submitted, and whether the applications are submitted electronically.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amendment)

401 KAR 5:055. Scope and applicability of the KPDES Program.

RELATES TO: KRS 224.01-010, 224.01-070, 224.01-400, 224.70-100, 224.70-120, 224.99-010, 33 C.F.R. 153, 40 C.F.R. 122, 123.44, 144, 300, 401.15, 33 U.S.C. 1251 -1387, 42 U.S.C. 300f – 300j[~~, EO 2008-507, 2008-531~~]

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 224.16-050, 224.18-100, 224.70-100, 40 C.F.R. 122.21,300, 33 U.S.C. 1251 -1387

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes the cabinet to require for persons discharging into the waters of the Commonwealth, by administrative regulation, technological levels of treatment and effluent limitations. KRS 224.16-050(1) authorizes the cabinet to issue federal permits pursuant to 33 U.S.C. 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C. 1251 – 1387, subject to the conditions imposed in 33 U.S.C. 1342(b) and (d). KRS 224.16-050(1) requires that any exemptions granted in the issuance of these permits shall be pursuant to 33 U.S.C. 1311, 1312, and 1326(a). KRS 224.16-050(4) requires that the cabinet shall not impose under any permit issued pursuant to this administrative regulation an effluent limitation, monitoring requirement, or other condition that is more stringent than the effluent limitation, monitoring requirement, or other condition that would have been applicable under the federal regulation if the permit was issued by the federal government.[~~EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental Protection Cabinet and establish the new Energy and Environment Cabinet.~~] This administrative regulation establishes the scope and applicability of the KPDES program and identifies categories of point sources required to obtain a KPDES permit, requirements pertaining to exclusions and prohibitions, requirements for general permits, requirements for disposal into wells and into publicly-owned treatment works (POTW), and requirements for disposal by land application.

Section 1. Definitions. Definitions established in 40 C.F.R. 122.2 shall apply for the interpretation of federal regulations that are cited within this administrative regulation.

Section 2. Applicability of the KPDES Requirements. (1) A KPDES permit shall be required to discharge pollutants from a point source into waters of the Commonwealth.

(2) Compliance with the KPDES program requirements shall constitute compliance with the operational permit requirements of 401 KAR 5:005.

(3) Failure to obtain a KPDES permit shall not relieve a discharger whose discharge is subject to the KPDES program from complying with the applicable performance standards of the KPDES program, 401 KAR 5:050 through 5:080.

Section 3. Point Source Categories Requiring a KPDES Permit. (1) The following categories of point sources shall require a KPDES permit to discharge:

(a) A point source discharge identified in 40 C.F.R. 122, effective July 1, 2011[~~2008~~];

(b) A concentrated animal feeding operation;

(c) A concentrated aquatic animal production facility;

(d) A discharge into aquaculture projects;

(e) A discharge from separate storm sewers; and

(f) A silviculture point source.

(2) A facility covered by a general permit issued pursuant to Section 8 of this administrative regulation, may be required to ob-

tain an individual permit based on contributions to water pollution.

(3) If an individual permit is required pursuant to this section, except as provided in subsection (4) of this section, the cabinet shall notify the discharger of that decision and the reasons for it.

(a) The discharger shall apply for a permit pursuant to 401 KAR 5:060 within sixty (60) days of notice, unless an extension is requested by the applicant.

(b) The question of whether the permit determination was proper shall remain open for consideration during the public comment period pursuant to 401 KAR 5:075 and in a subsequent hearing pursuant to KRS 224.10-420(2).

(4) (a) Prior to a determination that an individual permit shall be required for a storm water discharge, the cabinet may require the discharger to submit information regarding the nature of the discharge as established in 40 C.F.R. 122.21(e), effective July 1, 2011[~~2008~~], if:

1. The provisions of the general permit are not sufficient to protect human health and the environment; or

2. The discharger has a history of noncompliance with the provisions of the general permit.

(b) If an individual permit is required pursuant to this section, the cabinet shall notify the discharger of that decision and the reasons for it.

(c) The discharger shall apply for a KPDES permit within sixty (60) days of notice, unless an extension is requested by the applicant.

(d) The question of whether the initial determination was proper shall remain open for consideration during the public comment period pursuant to 401 KAR 5:075 and in a subsequent hearing pursuant to KRS 224.10-420(2).

Section 4. Exclusions. An exclusion from the requirement to obtain a KPDES permit shall be:

(1) A discharge identified in 40 C.F.R. 122.3, effective July 1, 2011[~~2008~~], or KRS 224.16-050(6);

(2) An authorization by permit or by rule that is prepared to assure that underground injection will not endanger drinking water supplies, pursuant to the Safe Drinking Water Act, 42 U.S.C. 300f-300j, and that are issued under a state or federal Underground Injection Control program;

(3) An underground injection control well that is permitted pursuant to 40 C.F.R. 144 if those permits are protective of public health and welfare and prevent the pollution of ground and surface waters; or

(4) A discharge that is not regulated by the U.S. EPA under the Clean Water Act Section 402, 33 U.S.C. 1342.

Section 5. Prohibitions. The cabinet shall not issue a KPDES permit if:

(1) The conditions of the permit would violate the provisions of KRS Chapter 224;

(2) The regional administrator has objected to issuance of the permit in writing pursuant to the procedures specified in 40 C.F.R. 123.44, effective July 1, 2011[~~2008~~];

(3) The conditions of the permit do not comply with the water quality standards established in 401 KAR 10:031; or

(4) A prohibition is established in 40 C.F.R. 122.4, effective July 1, 2011[~~2008~~].

Section 6. Variance Requests from Technology-based Effluent Limitations. (1) A non-POTW may request a variance from otherwise applicable effluent limitations as established in 40 C.F.R. 122.21(m), effective July 1, 2011[~~2008~~].

(2) A non-POTW may request an expedited variance as established in 40 C.F.R. 122.21(o), effective July 1, 2011[~~2008~~].

Section 7. Effect of a Permit. The effect of a KPDES permit shall be as established in 40 C.F.R. 122.5, effective July 1, 2011[~~2008~~].

Section 8. A General permit shall be issued as established in 40 C.F.R. 122.28, effective July 1, 2011[~~2008~~].

Section 9. Disposal of Pollutants into Underground Injection Control Wells, into Publicly Owned Treatment Works, or by Land Application. (1) An adjustment of effluent limitations related to disposal of pollutants into wells, into publicly owned treatment works, or by land application shall be as established in 40 C.F.R. 122.50, effective July 1, 2011[~~2008~~].

(2) The cabinet may issue permits to control the disposal of pollutants into wells if necessary to protect the public health and welfare and to prevent the pollution of ground and surface waters.

Section 10. Variances from Technology-Based Treatment Requirements Available to KPDES Applicants. Consistent with KRS 224.16-050, the variance provisions in this section and in 401 KAR 5:080, Sections 2 and 4, establish those variances from technology-based requirements available to KPDES applicants. (1) Economic capability. The cabinet, with the concurrence of U.S. EPA, may modify BAT requirements for a point source if the owner or operator demonstrates that the variance satisfies the requirements of 33 U.S.C. 1311(c).

(2) Environmental considerations. The cabinet, with the concurrence of U.S. EPA, may modify the BAT requirement for a point source that does not discharge toxic pollutants identified in 40 C.F.R. 401.15, effective July 1, 2011[~~2008~~], conventional pollutants, or the thermal component of that discharge, if the owner or operator demonstrates that the modification is consistent with the conditions established in 33 U.S.C. 1311(g).

(3) Innovative technology. The cabinet shall establish a date for complying with the deadline for achieving BAT not later than two (2) years after the date for compliance with the effluent limitation would otherwise be applicable, if the innovative technology is as established in 33 U.S.C. 1311(k) and after consultation with the U.S. EPA Regional Administrator, as required by 40 C.F.R. 124.62(a)(2), effective July 1, 2011.

(4) Thermal pollution. An alternative effluent limitation for the thermal component of a discharge shall be as established in 33 U.S.C. 1326(a).

Section 11. Substitutions, Exceptions, and Additions to Cited Federal Regulations. (1) "Waters of the Commonwealth" shall be substituted for "Waters of the United States" in the federal regulations cited in Sections 1 through 10 of this administrative regulation.

(2) "Cabinet" shall be substituted for "Director" if the authority to administer the federal regulations cited in Sections 1 through 10 of this administrative regulation has been delegated to the cabinet.

(3) "KPDES" shall be substituted for "NPDES" if the cabinet has been delegated authority to implement federal regulations cited in Sections 1 through 10 of this administrative regulation.

(4) "Standard metropolitan statistical areas as defined by the University of Louisville Urban Studies Center, consistent with the U.S. Office of Management and Budget" shall be substituted for "Standard metropolitan statistical areas as defined by the Office of Management and Budget" in 40 C.F.R. 122.28(a)(1)(vi).

(5) "Urbanized areas as designated by the University of Louisville Urban Studies Center consistent with the U.S. Bureau of the Census" shall be substituted for "Urbanized areas as designated by the Bureau of the Census according to criteria in 30 FR 15202, effective May 1, 1974" in 40 C.F.R. 122.28 (a)(1)(vi).

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: July 3, 2012

FILED WITH LRC: July 9, 2012 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 28, 2012 at 5:00 P.M. (Eastern Time) at 300 Fair Oaks Lane, Conference Room 301D, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 21, 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 August 31, 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: Karen Cronen, Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111, email Karen.Cronen@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sandy Gruzesky

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the scope and applicability of the KPDES program including specific inclusions and exclusions, prohibitions, requirements for general permits, requirements for disposal into wells and into publicly-owned treat works (POTW) and disposal by land application.

(b) The necessity of this administrative regulation: KRS 224.16-050 (1) requires that any exemptions granted in the issuance of these permits shall be pursuant to 33 U.S.C. 1311, 1312, and 1326(a). Further, KRS 224.15-050(4) requires that the cabinet shall not impose under any permit issued pursuant to this administrative regulation an effluent limitation, monitoring requirement or other condition that is more stringent than the effluent limitation, monitoring requirement or other condition that would have been applicable under the federal regulation if the permit were issued by the federal government.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 authorizes the cabinet to require for persons discharging into the waters of the Commonwealth, by administrative regulation, technological levels of treatment and effluent limitations. KRS 224.16-050(1) provides that the cabinet may issue federal permits pursuant to 33 U.S.C. 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C. 1251-1387.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides specific bounds for the scope of the KPDES 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: The amendment to this administrative regulation updates the citations to the corresponding federal regulations and clarifies that the state requirements are the same as the federal requirements. Specifically, the amendment clarifies that the cabinet will consult with EPA's regional administrator as required by 40 C.F.R. 124.62(a)(2), before approving innovative technology.

(b) The necessity of the amendment to this administrative regulation: 40 C.F.R. 123.62 requires the cabinet to submit for EPA's approval the Kentucky National Pollutant Discharge Elimination System administrative regulations. The most recent revisions, effective 2009, were submitted to EPA and EPA partially approved Kentucky's administrative regulations in February 2012. The revisions to this administrative regulation are necessary to clarify that Kentucky's regulations are no less stringent that the federal regulations and to gain full approval from EPA.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 224.16-050, which authorizes the cabinet to implement the Federal Water Pollution Control Act.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will clarify that Kentucky's regulation is no less stringent than the corresponding federal regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects individuals, businesses, and organizations that are engaged in the regulated disposal of treated wastewater under the KPDES permitting program. Although over 10,000 permitted entities are affected by this administrative regulation, the amendment will not change the way the program is implemented.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to the administrative regulation does not change the way the program is implemented; so, regulated entities will not need to take any additional action.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Under this regulation, individuals, businesses, and organizations are not expected to experience any additional cost. Because these requirements are already in federal requirements, amending this regulation for consistency with federal regulations will create no additional economic burden upon affected entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated community affected by this regulation will not be confused by inconsistencies between existing regulations and the updated federal regulations.

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

(a) Initially: No additional cost is anticipated.

(b) On a continuing basis: No additional cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Existing permit fees, General Funds, and EPA Funds. This amendment does not change any source of 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: No additional fees or funding are expected to support this amendment.

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

(9) TIERING: Is tiering applied? Yes. Permit requirements are tiered based upon the nature and size of the wastewater discharge.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation affects wastewater treatment systems that discharge to waters of the Commonwealth. This amendment affects all units of state or local government that have a KPDES discharge permit.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.10-110, 224.16-050, 224.18-100, 224.70-100, 40 C.F.R. 122.21,300, 33 U.S.C. 1251 -1387

3. 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. Because these requirements are already in federal regulations, amending this regulation for consistency with federal regulations will create no additional economic burden upon state or local agencies.

(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 is not expected to impact 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? None

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 122 and U.S.C. 1251-1387.

2. State compliance standards. KRS 224.16-050

3. Minimum or uniform standards contained in the federal mandate. The federal standard requires that delegated states meet or exceed the federal requirements for water pollution prevention developed under the Clean Water Act, as Amended (33 U.S.C. 1251-1387).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No, the amendment to this regulation will not apply stricter standards than those required by the federal mandate.

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

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amendment)

401 KAR 5:060. KPDES application requirements.

RELATES TO: KRS 224.01-010, 224.01-400, 224.70-100, 224.70-120, 224.99-010, 40 C.F.R. 110.6, 117.21, 122, 123.35, 136, 261, 262.34, 302.6, 355, Chapter I, Subchapter N, Parts 401-471, 33 U.S.C. 1251-1387, 42 U.S.C. 300h, 6901-7000, 11023[~~, EO 2008-507, 2008-531~~]

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 224.16-050, 224.70-110, 40 C.F.R. 110.6, 117.21, 122, 123.35, 136, 261, 262.34, 302.6, 355, Chapter I, Subchapter N, Parts 401-471, 33 U.S.C. 1251-1387, 42 U.S.C. 300h, 6901-7000, 11023

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes the cabinet to issue, continue in effect, revoke, modify, suspend, or deny permits to discharge into any waters of the Commonwealth. KRS 224.16-050 authorizes the cabinet to issue federal permits pursuant to 33 U.S.C. 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C. 1251-1387, subject to the conditions established in 33 U.S.C. 1342(b) and (d) and that any exemptions granted shall be pursuant to the Federal Water Pollution Control Act, 33 U.S.C. 1251-1387.[~~EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet.~~] This administrative regulation establishes the application requirements for a KPDES permit and contains additional requirements for general and specific categories of dischargers.

Section 1. Definitions. Definitions established in 40 C.F.R. 122.2 shall apply for the interpretation of the federal regulations cited within this administrative regulation.

Section 2. Applying for a KPDES Permit. (1) Application requirements. A person who is required to have a permit, including a new applicant or permittee with an expiring permit, shall complete, sign, and submit an application to the cabinet as established in this administrative regulation and 401 KAR 5:055.

(2) Duty to apply.

(a) 1. A person who discharges or proposes to discharge pollutants and who does not have an effective permit shall submit a complete application to the cabinet in accordance with this section, unless excluded as established in clauses a. through c. of this subparagraph.

a. A person covered pursuant to general permits as established in 40 C.F.R. 122.28, effective July 1, 2011[~~2008, as amended in the Federal Register, Volume 73, Number 225 P70483, November 20, 2008~~].

b. A person discharging to a POTW as established in 40 C.F.R. 122.3, effective July 1, 2011[~~2008~~] unless the cabinet requires an individual permit pursuant to 40 C.F.R. 122.44(m), effective July 1, 2011[~~2008~~].

c. A user of a privately owned treatment works, unless the cabinet requires an individual permit pursuant to 40 C.F.R. 122.44(m), effective July 1, 2011[~~2008~~].

2. The application shall include a BMP program if necessary pursuant to 40 C.F.R. 122.44 (k), effective July 1, 2011[~~2008~~].

(b) An applicant shall submit the appropriate application form, as established in Table 1. of this paragraph.

TABLE 1	
Discharge Type	Required Application Form
POTW	1 and A
CAFO	1 and B
Aquatic Animal Production Facility	1 and B
Manufacturing, commercial, mining and silvicultural discharges with process water	1 and C
Manufacturing, commercial, mining and silvicultural discharges with nonprocess wastewater only	1 and SC
Industrial stormwater point source discharges	1 and F

(3) Additional requirements for KPDES applications shall be as established in 40 C.F.R. 122.21, effective July 1, 2011[~~2008, as amended in the Federal Register, Volume 73, Number 225 P70481-70483, November 20, 2008~~] and the modifications, exceptions, and additions of Section 11 of this administrative regulation.

(4) Continuation of expiring permits.

(a) The conditions of an expired permit shall continue in force until the effective date of a new permit if:

1. The permitttee has submitted a timely and complete application; and

2. The cabinet, through no fault of the permittee, does not issue a new permit with an effective date under 401 KAR 5:075, Section 11, on or before the expiration date of the previous permit.

(b) Effect. A permit continued pursuant to this subsection shall remain fully effective and enforceable until the effective date of a new permit.

(c) Enforcement. If the permittee is not in compliance with the conditions of the expiring or expired permit the cabinet shall do the following:

1. Initiate enforcement action based upon the permit that has been continued;

2. Issue a notice of intent to deny the new permit pursuant to 401 KAR 5:075, Section 3;

3. Issue a new permit pursuant to 401 KAR 5:075 with appropriate conditions to ensure that the permit is protective of water quality; or

4. Take action authorized by KRS 224 and 401 KAR Chapter 5.[~~shall be as established in 40 C.F.R. 122.6, effective July 1, 2008.~~]

(5) An animal feeding operation may submit Form NDCAFO to satisfy the voluntary certification of no-discharge pursuant to 40 C.F.R. 122.23(i), effective July 1, 2011[~~2008, as amended in the Federal Register, Volume 73, Number 225 P70481-70483, November 20, 2008~~].

Section 3. Service of Process. (1) Each applicant and permittee shall provide the cabinet with an address for receipt of a[~~any~~] legal document for service of process.

(2) The last address provided to the cabinet pursuant to this provision shall be the address at which the cabinet shall tender a[~~any~~] legal notice.

Section 4. Signatories to Permit Applications and Reports. Signatories to permit applications and reports shall be as established in 40 C.F.R. 122.22, effective July 1, 2011[~~2008~~].

Section 5. Concentrated Animal Feeding Operations. (1) Additional permit application and special KPDES program requirements shall be as established in 40 C.F.R. 122.23, effective July 1, 2011[~~2008, as amended in the Federal Register, Volume 73, Number 225 P70480-70483, November 20, 2008~~].

(2) The incorporation of the terms of a CAFO's nutrient management plan into the terms and conditions of a general permit if a CAFO obtains coverage under a general permit in accordance with

40 C.F.R. 122.23(h) and 40 C.F.R. 122.28 is not a cause for permit modification pursuant to the requirements of 401 KAR 5:070, Section 6, or 40 C.F.R. 122.62, effective July 1, 2011[~~as amended in the Federal Register, Volume 73, Number 225 P70485, November 20, 2008~~].

(3) The incorporation of changes to the terms of a CAFO's nutrient management plan that have been revised in accordance with the requirements established in 40 C.F.R. 122.42(e)(6), effective July 1, 2011,[~~as amended in the Federal Register, Volume 73, Number 225 P70484, November 20, 2008~~] shall be a minor modification as established in 40 C.F.R. 122.63, effective July 1, 2011[~~as amended in the Federal Register, Volume 73, Number 225 P70485, November 20, 2008~~].

Section 6. Concentrated Aquatic Animal Production Facilities. A concentrated aquatic animal production facility shall be a point source subject to the KPDES permit program and shall be subject to permit application and special KPDES program requirements established in 40 C.F.R. 122.24, effective July 1, 2011[~~2008~~].

Section 7. Aquaculture[~~Concentrated Aquatic Animal~~] Projects. A discharge into an aquaculture[~~aquatic animal~~] project shall be a point source subject to the KPDES permit program and the requirements established in 40 C.F.R. 122.25, effective July 1, 2011[~~2008~~].

Section 8. Storm Water Discharges. A point source discharge of storm water shall be subject to the KPDES permit program and the requirements established in 40 C.F.R. 122.26, effective July 1, 2011[~~2008~~].

Section 9. Silvicultural Activities. A silvicultural point source shall be a point source subject to the KPDES permit program and the requirements established in 40 C.F.R. 122.27, effective July 1, 2011[~~2008~~].

Section 10. Regulated Small MS4. (1) The objective of regulating a small MS4 shall be as established in 40 C.F.R. 122.30, effective July 1, 2011[~~2008~~].

(2) The operator of a small MS4 shall be subject to regulation as established in 40 C.F.R. 122.32, effective July 1, 2011[~~2008~~].

(3) The application requirements for a small MS4 shall be as established in 40 C.F.R. 122.33, effective July 1, 2011[~~2008~~].

(4) The permit for a small MS4 shall contain[~~the~~] conditions consistent with the requirements established in 40 C.F.R. 122.34, effective July 1, 2011[~~2008~~].

(5) A small MS4 may share responsibilities to implement minimum control measures as established in 40 C.F.R. 122.35, effective July 1, 2011[~~2008~~].

Section 11. Substitutions, Exceptions, and Additions to Cited Federal Regulations. (1) "Waters of the Commonwealth" shall be substituted for "Waters of the United States" in the federal regulations cited in Sections 1 through 10 of this administrative regulation.

(2) "Cabinet" shall be substituted for "Director" if the authority to administer federal regulations cited in Sections 1 through 10 of this administrative regulation has been delegated to the cabinet.

(3) "KPDES" shall be substituted for "NPDES" if the authority to administer federal regulations cited in Sections 1 through 10 of this administrative regulation has been delegated to the cabinet.

(4) The forms required in Section 2(2)(b) of this administrative regulation shall be substituted for the federal forms established in 40 C.F.R. 122.21, effective July 1, 2011[~~2008~~].

(5) (a) The conditions for Cooling Water Phase II established in 40 C.F.R. 122.21(r)(1)(ii) shall be modified to remove the references to 40 C.F.R. 125.95, effective July 1, 2011[~~2008~~].

(6) The special procedures related to thermal variances cited as 40 C.F.R. Section 124.65 in 40 C.F.R. 122.21(m)(6) shall be modified to 40 C.F.R. 124.62, effective July 1, 2011[~~2008~~].

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

(a) KPDES Form 1, DEP 7032, February 2009;

(b) KPDES Form A, DEP 7032A, February 2009;

(c) KPDES Form B, DEP 7032B, February 2009;

(d) KPDES Form C, DEP 7032C, February 2009;

(e) KPDES Form SC, DEP 7032SC, February 2009;

(f) KPDES Form F, DEP 7032F, February 2009;

(g) KPDES Form NE, DEP 7032NE, February 2009; and

(h) KPDES Form NDCAFO, DEP 7032NDCAFO, February 2009.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: July 3, 2012

FILED WITH LRC: July 9, 2012 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 28, 2012 at 5:00 P.M. (Eastern Time) at 300 Fair Oaks Lane, Conference Room 301D, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 21, 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 August 31, 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: Karen Cronen, Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111, email Karen.Cronen@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sandy Gruzesky

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application requirements for all KPDES permits and contains additional requirements for general and specific categories of dischargers.

(b) The necessity of this administrative regulation: This administrative regulation establishes specific requirements for permitting discharges into waters of the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 authorizes the cabinet to issue, continue in effect, revoke, modify, suspend, or deny under such conditions as the cabinet may prescribe, permits to discharge into any waters of the Commonwealth. KRS 224.16-050 authorizes the cabinet to issue federal permits pursuant to 33 U.S.C. Section 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 – 1387, subject to the conditions imposed in 33 U.S.C. Sections 1342(b) and (d) and that any exemptions granted shall be pursuant to the Federal Water Pollution Control Act.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides specific requirements for several categories of permits; furthermore, the administrative regulation references specific documents and governing federal regulations relevant to the permitting 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 updates the citations to the corresponding federal regulations and clarifies that the state requirements are the same as the federal requirements. Additionally, the amendment clarifies the cabinet's authority for continuation of an expired permit.

(b) The necessity of the amendment to this administrative regulation: 40 C.F.R. 123.62 requires the cabinet to submit for

EPA's approval the Kentucky National Pollutant Discharge Elimination System administrative regulations. The most recent revisions, effective 2009, were submitted to EPA and EPA partially approved Kentucky's administrative regulations in February 2012. The revisions to this administrative regulation are necessary to clarify that Kentucky's regulations are no less stringent that the federal regulations and to gain full approval from EPA.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.10-100 authorizes the cabinet to issue, continue in effect, revoke, modify, suspend, or deny under such conditions as the cabinet may prescribe, permits to discharge into any waters of the Commonwealth. KRS 224.16-050 authorizes the cabinet to issue federal permits pursuant to 33 U.S.C. Section 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 – 1387, subject to the conditions imposed in 33 U.S.C. Sections 1342(b) and (d) and that any exemptions granted shall be pursuant to the Federal Water Pollution Control Act.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will clarify that Kentucky's regulation is no less stringent than the corresponding federal regulations and the authority of the cabinet to administratively continue an expired permit.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects individuals, businesses, and organizations that are engaged in the regulated disposal of treated wastewater under the KPDES permitting program. Although over 10,000 permitted entities are affected by this administrative regulation, the amendment will not change the way the program is implemented.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to the administrative regulation does not change the way the program is implemented; so, regulated entities will not need to take any additional action.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Under this regulation, individuals, businesses, and organizations are not expected to experience any additional cost. Because these requirements are already in federal requirements, amending this regulation for consistency with federal regulations will create no additional economic burden upon affected entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated community affected by this regulation will not be confused by inconsistencies between existing regulations and the updated federal regulations.

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

(a) Initially: No additional cost is anticipated.

(b) On a continuing basis: No additional cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Existing permit fees, General Funds, and EPA Funds. This amendment does not change any source of 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: No additional fees or funding are expected to support this amendment.

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

(9) TIERING: Is tiering applied? Permit requirements are tiered based upon the nature and size of the wastewater discharge.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation affects wastewater treatment systems that discharge to waters of the Commonwealth. This amendment affects all units of state or local government that have a KPDES discharge permit.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.10-110, 224.16-050, 224.70-110, 40 C.F.R. 110.6, 117.21, 122, 123.35, 136, 261, 262.34, 302.6, 355, Chapter I, Subchapter N, Parts 401-471, 33 U.S.C. 1251-1387, 42 U.S.C. 300h, 6901-7000, 11023

3. 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. Because these requirements are already in federal regulations, amending this regulation for consistency with federal regulations will create no additional economic burden upon state or local agencies.

(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 is not expected to impact 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? None

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.
40 C.F.R. 122 and 33 U.S.C. 1251-1387.

2. State compliance standards. KRS 224.16-050

3. Minimum or uniform standards contained in the federal mandate. The federal standard requires that delegated states meet or exceed the federal requirements for water pollution prevention developed under the Clean Water Act, as Amended (33 U.S.C. 1251-1387).

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. Not applicable.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 6:230. Little Sandy 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 any division therein. 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 Little Sandy Correctional Complex.

Section 1. Incorporation by Reference. (1) "Little Sandy Cor-

rectional Complex Policies and Procedures," July 11, 2012[~~April 14, 2008~~], are incorporated by reference. Little Sandy Correctional Complex Policies and Procedures include:

LSCC 01-12-01 Public Information and Media Communication (Added 7/11/12)
LSCC 02-01-03 Fiscal Management Agency Funds (Added 4/14/08)
LSCC 06-01-01 Offender Records (Added 4/14/08)
LSCC 08-01-01 Occupational Exposure to Serious and Infectious Diseases (Added 2/15/08)
LSCC 10-01-01Special Management Unit (Added 7/11/12)
LSCC 11-02-01 Food Service Security (Added 4/14/08)
LSCC 11-06-01 Health Requirement of Food Handlers (Added 2/15/08)
LSCC 11-07-01 Food Service: Inspections and Sanitation (Added 4/14/08)
LSCC 12-01-01 Clothing, Bedding, Hygiene Supplies and Barber Shop (Added 7/11/12)
LSCC 12-02-01 Sanitation Inspections (Added 7/11/12)
LSCC 12-03-01 Vermin and Insect Control (Added 7/11/12)
LSCC 13-02-03 Continuity of Care: Health Evaluations, Intra-System Transfer, Individual Treatment Plans (Added 2/15/08)
LSCC 13-03-01 Use of Pharmaceutical Products (Added 2/15/08)
LSCC 13-13-01 Inmate Self-Administration of Medication (Added 2/15/08)
LSCC 14-02-01 Legal Services Program (Added 4/14/08)
LSCC 15-01-01 Drug Abuse Testing (Added 2/15/08)
LSCC 16-01-01 Inmate Visiting (Added 4/14/08)
LSCC 16-02-02 Inmate Correspondence and Privileged Mail (Added 2/15/08)
LSCC 16-03-01 Inmate Telephone Communications (Added 2/15/08)
LSCC 17-01-01 LSCC Inmate Property Control (Added 4/14/08)
LSCC 18-01-01 Inmate Classification (Added 7/11/12)
LSCC 18-02-01 Meritorious Housing (Added 2/15/08)
LSCC 19-01-01 Inmate Work Program (Added 2/15/08)
LSCC 20-01-01 Educational Programs (Added 7/11/12)
LSCC 22-02-01 Inmate Clubs and Organizations (Added 2/15/08)
LSCC 25-01-01 Pre-Release Program (Amended 7/11/12[~~Added 2/15/08~~])
LSCC 25-01-02 Inmate Release Process (Added 4/14/08)
LSCC 26-01-01 Citizen Involvement and Volunteer Services Programs (Added 2/15/08)

(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: June 27, 2012

FILED WITH LRC: July 11, 2012 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD**:** A public hearing on this administrative regulation shall be held on August 21, 2012 at 9:00 a.m. in the Kentucky Transportation Cabinet Building's Auditorium, 200 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 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, Assistant General Counsel, Department of Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker (502)564-3279

(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 Little Sandy Correctional Complex regarding the rights and responsibilities of Little Sandy Correctional Complex employees and the inmate population.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035, 197.020, and to meet ACA requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operations of Little Sandy 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 Little Sandy Correctional Complex employees and the inmate population concerning 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, and update ACA standards.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirement 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 Little Sandy Correctional Complex.

(d) How the amendment will assist in the effective administration of the statutes: It makes changes to allow a clearer understanding of the policies by the Little Sandy Correctional Complex employees and inmate population, thereby impacting the safety and security of the institution.

(3) Type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: 254 employees of the Little Sandy Correctional Complex and 1,002 inmates and all visitors to Little Sandy 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): An increase in cost is not anticipated to the entities from the changes in operations made in the amendments.

(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 penal 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 2012-2013 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.

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

(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 Little Sandy 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 Little Sandy 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 Little Sandy 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 Little Sandy Correctional Complex operates, but are not expected to 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 Little Sandy 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 6:270. Probation and parole policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.3104, 439.3105, 439.3107, 439.345, 439.470, 439.551,

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.3105, 439.3107, 439.345, 439.470, and 439.551 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 any 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 Department of Corrections Division of Probation and Parole.

Section 1. Incorporation by Reference. (1) "Probation and Parole Policies and Procedures," July 11, 2012[~~March 12, 2012~~], are incorporated by reference. Probation and Parole Policies and Procedures include:

27-06-02 Equal Access to Services (Amended 7/11/12[~~Added 1/12/05~~])

27-07-01 Cooperation with Law Enforcement Agencies (Amended 7/11/12[~~Added 1/12/05~~])

27-08-01 Critical Incident Planning and Reporting and Use of Force (Amended 12/16/11)

27-09-01[~~Kentucky~~] Community Resources[~~Directory~~] (Amended 7/11/12 [~~Added 1/12/05~~])

27-10-01 Pretrial Diversion (Amended 7/11/12 [~~4/12/05~~])

27-10-02 Mandatory Re-Entry Supervision (Amended 3/12/12)

27-10-03 Post-incarceration Supervision (Amended 3/12/12)

27-11-01 Citizen Complaints (Amended 7/11/12[~~2/13/06~~])

27-11-02 Staff-Offender Interaction (Amended 7/11/12[~~Added 9/12/08~~])

27-12-01 Case Classification (Amended 3/12/12)

27-12-03 Initial Interview and Intake of New Case (Amended 7/11/12[~~3/12/12~~])

27-12-04 Conditions of Supervision Document and Request for Modification (Amended 12/16/11)

27-12-05 Releasee's Report Document (Amended 7/11/12[~~Added 1/12/05~~])

27-12-06 Grievance Procedures for Offenders (Amended 12/16/11)

27-12-07 Administrative Caseloads (Amended 7/11/12[~~3/12/12~~])

27-12-11 Guidelines for Monitoring Financial Obligations (Amended 3/12/12)

27-12-13 Community Service Work (Amended 7/11/12[~~Added 1/12/05~~])

27-12-14 Offender Travel (Amended 12/16/11)

27-13-01 Drug and Alcohol Testing of Offenders (Amended 7/11/12[~~3/12/12~~])

27-14-01 Interstate Compact (Amended 3/12/12)

27-15-01 Investigating and Reporting Violations and Unusual Incidents (Amended 3/12/12)

27-15-03 Graduated Sanctions and Discretionary Detention (Amended 3/12/12)

27-16-01 Search, Seizure, and Processing of Evidence (Amended 7/11/12[~~12/9/08~~])

27-17-01 Absconder Procedure[~~Procedures~~] (Amended 7/11/12 [~~4/12/05~~])

27-18-01 Probation and Parole Issuance of Detainer or Warrant (Amended 7/11/12[~~4/12/05~~])

27-19-01 Preliminary Revocation Hearing (Amended 3/12/12)

27-20-03 Parole Compliance Credit (Amended 3/12/12)

27-21-01 Apprehension of Probation and Parole Violators (Amended 12/16/11)

27-23-01 In-state Transfer (Amended 7/11/12[~~Added 1/12/05~~])

27-24-01 Releasing Offender from Active Supervision (Amended 12/16/11)

27-24-02 Reinstatement of Offenders to Active Supervision (Amended 7/11/12[~~Added 1/12/05~~])

27-26-01 Assistance to Former Offenders and Dischargees (Amended 7/11/12[~~2/13/06~~])

27-30-01 Sex Offender Registration (Amended 12/16/11)

27-30-02 Sex Offender Supervision (Amended 7/11/12[~~3/12/12~~])

[~~27-32-01 Student Intern Program (Amended 12/14/05)~~

~~27-32-02 Community Based Volunteer Citizen Involvement (Amended 2/13/06)~~]

28-01-01 Probation and Parole Investigation Reports, Confidentiality, Timing, and General Comments (Amended 12/16/11)

28-01-02 Probation and Parole Investigation Documents (Administrative Responsibilities) (Amended 12/16/11)

28-01-03 Presentence, Post-sentence, and Other Investigative Reports (Amended 3/12/12)
28-01-08 Calculation of Custody Time Credit (Amended 7/11/12[~~3/12/12~~])
[~~28-01-09 Release of Information of Factual Content on Presentence or Postsentence Investigation Documents (Added 1/12/05)~~]
28-03-01 Parole Plan Investigation, Half-way Houses, and Sponsorship (Amended 3/12/12)
28-03-02 Release on Parole (Amended 12/16/11)
28-04-01 Furlough Verifications (Amended 7/11/12[~~Added 1/12/05~~])

(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: July 2, 2012
FILED WITH LRC: July 11, 2012 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD**:** A public hearing on this administrative regulation shall be held on August 21, 2012 at 9:00 a.m. in the Kentucky Transportation Cabinet Building's Auditorium, 200 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 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, Assistant General Counsel, Department of Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker (502) 564-3279

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes policies and procedures relating to supervision of probation and parole offenders.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.030, 196.035, 196.037, 196.070, 196.075, 439.470, 439.480, and 532.120(7).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation updates policy and procedures relating to supervision of probation and parole offenders and adds language to address legislative changes in HB 54.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation establishes policies and procedures relating to supervision of probation and parole offenders and provides clear direction and information to probation & parole employees in the supervision of offenders.

(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 revise policies and procedures for probation and parole, add language to address legislative requirements in HB 54, and makes revisions to comply with American Correctional Association (ACA) standards.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196.030, 196.035, 196.037, 196.070, 196.075, 439.470, 439.480, and 532.120(7).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment updates policy and procedures relating to supervision of probation and parole offenders. The Department is authorized to implement or amend practices or procedures to ensure the safe and efficient operation of the Division of Probation & Parole.

(d) How the amendment will assist in the effective administration of the statutes: This will assist the Division of Probation & Parole in operating more efficiently by streamlining supervision processes, adopting effective intervention practices and case management strategies, utilizing community resources, and referring offenders to social service agencies.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This affects the 728 Kentucky Department of Corrections Division of Probation and Parole employees, 42,250 offenders, and 120 releasing courts and the Parole Board.

(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: Probation and parole officers will have to learn new procedures to comply with statutory and regulatory changes. The Department will provide routine training to staff. Offender supervision will focus on criminogenic needs with targeted interventions. Offenders will have to abide by the revised policies.

(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 associated with this amendment to the regulation. The revision brings policy and procedure in line with American Correctional Association (ACA) standards revision and advances in the offender management system. Legislation passed in 2011 under HB 463 included $1.2 million to update the offender management system. Planned staffing expansion from the previous statutory changes includes a position to expand absconder monitoring at an approximate monthly salary cost of $2,427.44.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Offenders will benefit from efficient probation and parole supervision, more streamlined supervision processes, and focused intervention strategies. The Division of Probation & Parole will allocate resources to supervision services and programs according to nationally recognized evidence based practices. There is expected to be savings to incarceration costs in an unknown amount based on the application of pretrial home incarceration to time calculated as custody time credit.

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

(a) Initially: There is no cost associated with this amendment to the regulation as the policy revisions bring policy and procedure in line with advances in the offender management system. Legislation passed in 2011 under HB 463 included $1.2 million to update the offender management system. The Department continues to staff as funding levels allow. Routine officer training occurs at an annual training cost per officer of $411. Planned staffing expansion includes a position to expand absconder monitoring at an approximate monthly salary cost of $2,427.44 from the previous statutory changes rather than the regulatory changes.

(b) On a continuing basis: The Department continues to staff as funding levels allow. Routine officer training occurs at an annual training cost per officer of $411.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Department of Corrections 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: No increase in fees or funding will be necessary to implement the amendments in this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The regulation establishes uniformity in the supervision fee paid by

Interstate Compact offenders being supervised in Kentucky, in accordance with Interstate Compact requirements. The regulation also sets an amount for drug testing fees for offenders on probation and parole supervision. This administrative regulation amendment does not establish any new fees or directly or indirectly increase any fees.

(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.

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 Kentucky Department of Corrections, 120 releasing courts and the Parole Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.030, 196.035, 196.037, 196.070, 196.075, 439.470, 439.480, and 532.120(7).

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 releasing authority sets fees for most offenders. This regulation sets supervision fees for Interstate Compact offenders, which is estimated to generate approximately $201,450 annually. These fees are allocated to the Kentucky general fund. This regulation also sets fees for drug testing required for offenders on supervision. In FY 2011, the Division collected $1.5 million in drug testing fees. Drug testing fees collected are allocated to Department of Corrections restricted funds. This amendment does not affect 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? It is anticipated that the amount collected will be similar for subsequent years. This amendment does not affect revenue.

(c) How much will it cost to administer this program for the first year? No new program is created. The costs incurred for the regulation stem from continuing officer training. Routine officer training occurs at an annual training cost per officer of $411. Planned staffing expansion includes a position to expand absconder monitoring at an approximate monthly salary cost of $2,427.44, but is based on statutory changes rather than this amendment.

(d) How much will it cost to administer this program for subsequent years? The Department continues to staff as funding levels allow. Routine officer training occurs at an annual training cost per officer of $411.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Vehicle Licensing
(Amendment)

601 KAR 9:090. Procedures for inspecting vehicles.

RELATES TO: KRS 186A.115, 186A.500-550, 189.010-210
STATUTORY AUTHORITY: KRS 186A.020[~~, 186A.115~~]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 186A.020 authorizes the cabinet to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 186A. This administrative regulation establishes[~~sets forth~~] an alternate procedure for inspecting vehicles by Kentucky certified inspectors.

Section 1. Definitions. (1) "Roadworthiness" means "roadworthy condition" as defined by KRS 186A.510(8).

(2) "Salvage title" means the certificate of title for a vehicle that is not driven on a highway.

Section 2. Inspection of Vehicles Brought into Kentucky. (1) If an owner of a vehicle brought into the state as established in KRS 186A.115 does not have the title to that vehicle available upon[~~at the time of~~] the vehicle's physical inspection for roadworthiness, the certified motor vehicle inspector shall be allowed to inspect the vehicle and complete the certified inspector section of the application for title.

(2) A[~~However, the~~] certified inspector shall not sign or[~~neither sign nor~~] date the application for title of a vehicle brought into this state until the title for the vehicle being inspected is[~~for that vehicle has been~~] surrendered to the certified motor vehicle inspector for examination and verification.

(3)(a)[~~Section 2.~~] If the federal safety standard label[~~which appears~~] on the door of the vehicle is[~~either~~] missing or[~~is rendered~~] illegible, the certified motor vehicle inspector shall document this discrepancy on the application.

(b) The certified motor vehicle inspector shall[~~may then~~] certify the inspection by using [~~both~~] the vehicle identification number plate and the corresponding number on the vehicle title document.

Section 3. Inspection of Rebuilt or Reconstructed Vehicles. (1) A[~~The~~] certified motor vehicle inspector shall[~~may~~] inspect and certify a specially constructed or reconstructed vehicle if an[~~when no~~] outstanding motor vehicle title or manufacturers statement of origin document does not exist[~~exists. However, an application for specially constructed or reconstructed vehicle title shall also be completed in accordance with 601 KAR 9:047~~].

(2) A motor vehicle owner[~~Section 4. An owner who is~~] applying for a salvage title shall not be[~~under KRS 186A.335, that is, one for a vehicle which is not capable of and shall not be driven on a public highway is not~~] required to have a certified motor vehicle inspection.

Section 4. Procedures of Inspector. (1)[~~Section 5.~~] A certified motor vehicle inspector shall not inspect a[~~is prohibited from inspecting any~~] vehicle if the inspector[~~for which he~~] has an interest or ownership in the vehicle, or if the vehicle is owned by the inspector's[~~his~~] immediate family.

(2)(a)[~~Section 6.~~] Before signing[~~executing~~] the certificate of inspection for a specially constructed or reconstructed vehicle, a certified motor vehicle inspector shall perform a physical inspection of the[~~each~~] vehicle.

(b) A[~~As part of the physical inspection the~~] certified vehicle inspector shall insure that the vehicle complies with the[~~all~~] equipment and safety requirements of KRS 189.010 through 189.210[~~Chapter 189~~].

(c) The certified inspector shall[~~may only~~] execute a[~~the~~] certificate of inspection if the vehicle complies[~~does comply~~] with the equipment and safety requirements established by KRS 189.010 through 189.210.

TOM O. ZAWACKI, Commissioner
MIKE HANCOCK, Secretary
D. ANN DANGELO, Office of Legal Services
APPROVED BY AGENCY: July 12, 2012
FILED WITH LRC: July 13, 2012 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2012 at 10:00 a.m. local time at the Transportation Cabinet, Transportation Cabinet Building, Hearing Room C121, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing, of their intent to attend. If you

have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement five working days prior to the hearing. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business August 31, 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: D. Ann DAngelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ann DAngelo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the alternate procedure for Kentucky certified inspectors to inspect vehicles.

(b) The necessity of this administrative regulation: This regulation is necessary to update the existing inspection procedures for vehicles brought into the Commonwealth or vehicles going through the rebuilt process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 186A.020 authorizes the cabinet to promulgate administrative regulations to carry out the provisions of KRS Chapter 186A. KRS 186A.115 establishes the requirements for inspection of vehicles.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will further clarify the existing procedures related to the inspection of vehicles brought into the Commonwealth or vehicles going through the rebuilt 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 adds a definition for "roadworthiness", adds language relating to the inspection of vehicles brought into the Commonwealth, and generally updates the existing language of the administrative regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update procedures relating to the inspection of rebuilt and out of state vehicles.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment updates procedures related to the inspection of motor vehicles established in KRS 186A.115.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will give the most current requirements and updated language.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects owners of vehicles that are currently titled or registered in another state but are required to be titled and registered in Kentucky, owners of specially constructed or reconstructed vehicles, and Kentucky certified vehicle inspectors.

(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: Certified inspectors will have to insure that out of state vehicles coming into Kentucky and vehicles going through the rebuilt process are inspected for roadworthiness.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no fees involved with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will further clarify inspection processes.

(5) Provide an estimate of how much it will cost the administrative body to implement the administrative regulation: There are no known costs associated with implementing this administrative regulation. Note:

(a) Initially: None

(b) On a continuing basis: None

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

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

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

(9) TIERING: Is tiering applied? No. Anyone who is the owner of a vehicle brought into Kentucky from another state or an owner going through the Kentucky rebuilt process must have their vehicle inspected.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts procedures in the Transportation Cabinet's Department of Vehicle Regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 186.A.020

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There should not be any effect on the expenditures of a state or local 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 additional revenue.

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

(c) How much will it cost to administer this program for the first year? No administrative costs are required or expected.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ENERGY AND ENVIRONMENT CABINET
Public Service Commission
(Amendment)

807 KAR 5:001. Rules of procedure.

RELATES TO: KRS 61.870-884, 278.020(3), 278.300[~~Chapter 278~~]

STATUTORY AUTHORITY: KRS 278.040(3), 278.310[~~(2)~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) authorizes the commission to promulgate reasonable

administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.310[~~(2)~~] provides that all hearings and investigations before the commission or any commissioner shall be governed by rules adopted by the commission. This administrative regulation prescribes requirements with respect to formal and informal proceedings before the commission.

Section 1. Definitions.(1) "Case" means a matter coming formally before the commission.

(2) "Commission" is defined by KRS 278.010(15).

(3) "Electronic mail" means an electronic message that is sent to an electronic mail address and transmitted between two (2) or more telecommunications devices, computers, or electronic devices capable of receiving electronic messages.

(4) "Electronic mail address" means a destination, commonly expressed as a string of characters, to which electronic mail can be sent or delivered, and consists of a user name or mailbox and a reference to an Internet domain.

(5) "Executive Director" means the person appointed to the position established in KRS 278.100 or a person that he or she has designated to perform a duty or duties assigned to that position.

(6) "Party" means any person who:

(a) Initiates action through the filing of a formal complaint, application, or petition;

(b) Files a tariff or tariff sheet with the commission pursuant to KRS 278.180 and 807 KAR 5:011 that the commission has suspended and established a case to investigate or review;

(c) Is named as a defendant in a formal complaint filed pursuant to Section 19 of this administrative regulation;

(d) Is granted leave to intervene pursuant to Section 4(11) of this administrative regulation; or

(e) Is joined as a party to a commission proceeding.

(7) "Person" is defined by KRS 278.010(2).

(8) "Sewage" means a utility that meets the requirements of KRS 278.010(12).

(9) "Signature" means an original signature or an electronic signature as defined by KRS 369.102(8).

(10) "Utility" is defined by KRS 278.010(3).

Section 2. General Offices and Hearings. (1) The commission shall be in continuous session for the performance of administrative duties.

(2) Meetings of the commission for the consideration of all matters requiring formal hearings shall be held on days, at hours and at places as the commission may designate.

(3) The commission shall provide notice of hearing in a case by order except when a hearing is not concluded on the designated day and the presiding officer verbally announces the date for continuation of the hearing. Verbal announcements made by the presiding officer shall be deemed proper notice of the continued hearing.

Section 3. Executive Director to Furnish Information. (1) Upon request, the executive director shall:

(a) Advise any person as to the form of a petition, complaint, answer, application, or other document desired to be filed;

(b) Provide general information regarding the commission's procedures and practices; and

(c) Make available from the commission's files, upon request, any document or record pertinent to any matter before the commission unless KRS 61.878 expressly exempts the document or record from inspection or release.

(2) The executive director may reject for filing any document which on its face does not comply with the administrative regulations of the commission.

Section 4. General Matters Pertaining to All Formal Proceedings. (1) Address of the commission. All communications shall be addressed to "Public Service Commission, 211 Sower Boulevard, Post Office Box 615, Frankfort, Kentucky 40601."

(2) Case numbers and styles. Each case shall receive a number and a style descriptive of the subject matter. The number and style shall be placed on all subsequent documents filed in the case.

(3) Signing of pleadings.

(a) A pleading shall be signed by the submitting party or attorney and shall include the name, address, telephone number, facsimile number, and electronic mail address, if any, of the attorney of record or filing party.

(b) A pleading shall be verified or under oath when required by statute, administrative regulation, or order of the commission.

(4) A person shall not file any pleading on behalf of another person, or otherwise represent another person, unless the person is an attorney licensed to practice law in Kentucky or an attorney who has complied with SCR 3.030(2). An attorney who is not licensed to practice law in Kentucky shall present evidence of his or her compliance with SCR 3.030(2) when appearing before the commission.

(5) Amendments. Upon motion of a party, the commission may allow any complaint, application, answer, or other pleading or document to be amended or corrected or any omission supplied therein. Unless the commission orders otherwise, the amendment shall not relate back to the date of the original pleading or document.

(6) Witnesses and subpoenas.

(a) Upon the application of any party to a proceeding, subpoenas requiring the attendance of witnesses for the purpose of taking testimony may be signed and issued by a member of the commission.

(b) Subpoenas for the production of books, accounts, documents, or records (unless directed to issue by the commission on its own authority) may be issued by the commission, or any commissioner, upon application in writing, stating as nearly as possible the books, accounts, documents, or records desired to be produced.

(c) A party shall submit a completed subpoena with its application when necessary.

(d) Every subpoena shall be served, in the manner prescribed by subsection (8) of this section, on each party and any person whose information is being requested.

(e) Copies of all documents received in response to a subpoena shall be filed with the commission and furnished to all other parties to the case, except on motion and for good cause shown. Any other tangible evidence received in response to the subpoena shall be made available for inspection by the commission and all other parties to the action.

(7) Computation of Time.

(a) In computing any period of time prescribed or allowed by order of the commission or by any applicable administrative regulation or statute, the day of the act, event, or default after which the designated period of time begins to run shall not be included.

(b) The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, a legal holiday, or other day commission offices are legally closed, in which event the period shall run until the end of the next day which is not a Saturday, a Sunday, a legal holiday, or other day commission offices are legally closed.

(8) Service.

(a) Unless the commission orders otherwise, service shall be made upon the party's attorney when the party is represented by an attorney.

(b) Service upon an attorney or upon a party shall be made by delivering a copy to the attorney or party or by mailing it to the attorney or party at the last known address or by sending it by electronic means to the electronic mail address listed on pleadings that the attorney or party has submitted in the case. Service shall be complete upon mailing or electronic transmission, but electronic transmission shall not be effective if the serving party learns that it did not reach the person to be served.

(9) Filing.

(a) Unless electronic filing procedures set forth in Section 8 of this administrative regulation are used, a document shall not be deemed filed with the commission until it is physically received by the executive director at the commission's offices during the commission's official business hours.

(b) The executive director shall endorse upon each pleading or document accepted for filing the date of its filing. The endorsement shall constitute the filing of the pleading or document.

(10) Privacy protection for filings.

(a) If a party files a document containing an individual's social security number, taxpayer identification number, birth date, or a financial account number, the party shall redact the document so the following information cannot be read:

1. The digits of the Social Security number or taxpayer identification number;

2. The month and day of an individual's birth; and

3. The digits of the financial account number.

(b) To redact the document, the filing party shall replace the identifiers with neutral placeholders or cover the identifiers with an indelible mark, that so obscures the identifiers that they cannot be read.

(c) The executive director shall not be required to review documents for compliance with this section. The responsibility to redact a document shall rest with the party that files the document.

(11) Intervention and parties.

(a) In any formal proceeding, any person who wishes to become a party to a proceeding before the commission may by timely motion request that leave to intervene be granted. The motion shall include the movant's name and address and shall state his or her interest in the proceeding and how intervention is likely to present issues or develop facts that will assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings.

(b) The commission shall grant a person leave to intervene if it finds that a person has a special interest in the case which is not otherwise adequately represented or that intervention is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings.

(c) Persons granted leave to intervene shall be served with filed testimony, exhibits, pleadings, correspondence, and all other documents submitted by the parties in the case.

(d) Any person who the commission has not granted leave to intervene in a case may file written comments regarding the subject matter of the case. These comments shall be filed in the case record.

Section 5. Motion Practice. (1) All requests for relief which are not required to be made in a pleading shall be by motion. A motion shall state precisely the relief requested.

(2) Unless the commission orders otherwise, a party to a case shall file any response to a motion no later than seven (7) days from the date of filing of a motion.

(3) Unless the commission orders otherwise, a party shall file any reply no later than five (5) days of the filing of the most recent response to the party's motion. The reply shall be limited to the matters initially raised in the responses to the party's motion.

Section 6. Certificate of Service. All documents served under these administrative regulations shall have a proof of service certification. Proof of service shall state the date and method of service and shall be signed by a person who can verify service.

Section 7. Filing Procedures. (1) Unless the commission orders otherwise or the electronic filing procedures set forth in Section 8 of this administrative regulation are used, when an original document is filed with the commission, ten (10) additional copies shall also be filed.

(2) All documents filed with the commission shall conform to the requirements established in this subsection.

(a) Form. Filings shall be printed or typewritten, double spaced and on one (1) side of the paper only.

(b) Size. Filings shall be on eight and one-half (8 1/2) inches by eleven (11) inches paper stock.

(c) Font. Filings shall be in type no smaller than twelve (12) point, except footnotes which may be in type no smaller than ten (10) point.

(d) Binding. Any side-bound or top-bound filing shall also include an identical unbound copy.

(3) Except as provided for in Section 8 of this administrative regulation, any filing made with the commission outside its business hours shall be considered as filed on the commission's next business day.

(4) Documents submitted by facsimile transmission shall not be accepted.

Section 8. Electronic Filing Procedures. (1) Upon an applicant's timely election of the use of electronic filing procedures or upon motion of the commission, the procedures established in this section shall be used in lieu of other filing procedures set forth in this administrative regulation.

(2) At least seven (7) days prior to the submission of its application, an applicant shall:

(a) File with the commission written notice of its election to use electronic filing procedures using the Notice of Election of Electronic Filing Procedures Form; and

(b) If it does not have an account for electronic filing with the commission, register for an account at http://psc.ky.gov/Account/Register.

(3) All pleadings, documents, and exhibits shall be filed with the commission by uploading an electronic version of the document using the commission's E-Filing System at http://psc.ky.gov. In addition, the filing party shall file one (1) original with the commission as required by subsection (12)(a)2. of this section.

(4) Each file in an electronic submission shall be:

(a) In portable document format;

(b) Search-capable;

(c) Optimized for viewing over the Internet;

(d) Bookmarked to distinguish sections of the pleading or document; and

(e) If a scanned document, scanned at a resolution of no less than 300 dots per inch.

(5)(a) All electronic submissions shall include an introductory file in portable document format that is named "Read1st" and that contains:

1. A general description of the filing;

2. A list of all materials not included in the electronic filing; and

3. A statement attesting that the electronically filed documents are a true representation of the original documents.

(b) The "Read1st" file and any other document that normally contains a signature shall contain a signature in the electronically submitted document.

(c) The electronic version of the cover letter accompanying the paper filing may be substituted for a general description.

(d) If the electronic submission does not include all documents contained in the paper version (e.g., confidential materials, materials that are too large to transfer by electronic medium), the absence of these documents shall be noted in the "Read1st" document.

(6)(a) An electronic transmission or uploading session shall not exceed twenty (20) files.

(b) An individual file shall not exceed fifty (50) megabytes.

(c) If a filing party's submission exceeds the limitations established in paragraph (a) or (b) of this subsection, the filer shall make its electronic submission in two (2) or more consecutive electronic transmission or uploading sessions.

(7) If filing any document with the commission, the filing party shall certify that:

(a) The electronic version of the filing is a true and accurate copy of each document filed in paper medium;

(b) The electronic version of the filing has been transmitted to the commission; and

(c) A copy of the filing in paper medium has been mailed to all parties that the commission has excused from participation by electronic means.

(8)(a) Upon completion of a party's uploading of an electronic submission, the commission shall cause an electronic mail message to be sent to all parties of record advising that an electronic submission has been made to the commission.

(b) Upon a party's receipt of this message, it shall be the receiving party's responsibility to access the commission's electronic file depository at http://psc.ky.gov and view or download the submission.

(9) Unless it states its objection to the use of electronic filing procedures in its motion for intervention, a party granted leave to intervene shall:

(a) Be deemed to have consented to the use of electronic filing

procedures and the service of all documents and pleadings, including orders of the commission, by electronic means; and

(b) File with the commission within seven (7) days of the date of an order of the commission granting its intervention a written statement that:

1. It waives any right to service of commission orders by United States mail; and

2. It, or its authorized agent, possesses the facilities to receive electronic transmissions.

(10) Unless a party to a case states its objection to the use of electronic filing procedures within seven (7) days of issuance of an order in which the commission orders the use of electronic filing procedures on its own motion, that party shall:

(a) Be deemed to have consented to the use of electronic filing procedures and the service of all documents and pleadings, including orders of the commission, by electronic means; and

(b) File with the commission within seven (7) days of the date of an order directing the use of electronic filing procedures a written statement that:

1. It waives any right to service of commission orders by United States mail; and

2. It, or its authorized agent, possesses the facilities to receive electronic transmissions.

(11) If a party objects to the use of electronic filing procedures and the commission determines that good cause exists to excuse that party from the use of electronic filing procedures, service of documents on that party and by that party shall be made in accordance with Section 4(8) of this administrative regulation.

(12)(a) A document shall be considered timely filed with the commission if:

1. It has been successfully transmitted in electronic medium to the commission within the time allowed for filing and meets all other requirements imposed by this administrative regulation and any order of the commission; and

2. The original document, in paper medium, is filed at the commission's offices no later than the second business day following the electronic filing.

(b) Parties shall attach to the top of the paper submission a paper copy of the electronic mail message from the commission confirming transmission and receipt of its electronic submission.

(13) Except as expressly provided in this section, a party making a filing in accordance with the procedures set forth in this section shall not be required to comply with Section 4(8) of this administrative regulation.

Section 9. Hearings and Rehearings. (1) Except as otherwise determined in specific cases, the commission shall grant a hearing in the following classes of cases:

(a) If an order to satisfy or answer a complaint has been made and the person complained of has not satisfied the complaint to the satisfaction of the commission; or

(b) If an application has been made in a formal proceeding.

(2) Publication of notice. Upon the filing of any application, the commission may order an applicant to give notice on all other persons who may be affected by service of a copy of the application upon those persons or by publication. The applicant shall bear the expense of providing the notice. If the notice is given by publication, the commission may designate the length of time and the newspaper in which the notice shall appear. Proof of the publication shall be filed at or before the hearing.

(3) Investigation on commission's own motion. The commission may at any time, on its own motion, make investigations and order hearings into any act or thing done or omitted to be done by a utility, which the commission may believe is in violation of any law or of any order or administrative regulation of the commission. It may also through its own experts or employees, or otherwise, obtain any evidence as it may consider necessary or desirable in any formal proceeding in addition to the evidence presented by the parties.

(4) Conferences with commission staff. The commission, on its own motion, through its executive director or upon a request of a party, may convene a conference either prior to, or during the course of hearings in a case. To provide opportunity for settlement of a proceeding or any issues, the parties to a proceeding may meet in the presence of commission staff upon approval of the executive director. Participation in conferences with commission staff shall be limited to parties of the subject proceeding and their representatives.

(5) Conduct of hearings. Hearings shall be conducted before the commission or a commissioner or before a person designated by the commission to conduct a specific hearing.

(6) Stipulation of facts. By a stipulation in writing filed with the commission, the parties to any proceeding or investigation by the commission may agree upon the facts or any portion of the facts involved in the controversy, which stipulation shall be regarded and used as evidence at the hearing.

(7) Testimony. All testimony given before the commission shall be given under oath or affirmation.

(8) Objections and exceptions. A party objecting to the admission or exclusion of evidence before the commission shall state the grounds for its objection. Formal exceptions shall not be necessary and shall not be taken to rulings on objection.

(9) Record of evidence. (a) The commission shall cause to be made a record of all hearings. Unless the commission orders otherwise, this record shall be in digital video recording. A party to a case may, by motion made prior to the hearing, request that a stenographic transcript be made by a reporter approved by the commission. The commission shall grant the motion. The requesting party shall bear the cost of the stenographic transcript and shall ensure a copy of the transcript is filed with the commission within a reasonable time after completion of the hearing.

(b) The commission shall cause to be made a written exhibit list, a written hearing log, and a written log listing the date and time of where each witness' testimony begins and ends on the digital video recording.

(c) If a party introduces an exhibit that is neither a document nor a photograph, the commission may direct a photograph of the exhibit be substituted for the exhibit.

Section 10. Briefs. (1) All briefs shall be filed within the time fixed. The commission may refuse to consider any brief filed beyond the time fixed. Any request for extension of time to file a brief shall be made to the commission by written motion.

(2) Form of briefs. All briefs filed with the commission shall be in the form prescribed by the commission.

(3) A person wishing to submit an amicus curiae brief shall file a motion with the commission specifying with particularity the nature of his or her interest, the points to be presented, and their relevance to the disposition of the case. This motion shall be filed within fifteen (15) days of the time fixed for the filing of the parties' briefs. An amicus curiae brief shall be tendered with the motion.

Section 11. Documentary Evidence. (1) If documentary evidence is offered, the commission, in lieu of requiring the originals to be filed, may accept certified, or otherwise authenticated, copies of the documents or portions of the same as may be relevant, or may require evidence to be entered as a part of the record.

(2) Where relevant and material matter offered in evidence by any party is embraced in a book, paper, or document containing other matter not material or relevant, the party shall plainly designate the matter so offered. If any immaterial matter unnecessarily encumbers the record, the book, paper or document shall not be received in evidence, but may be described for identification, and if properly authenticated, the relevant and material matter may be read into the record, or if the commission, or commissioner conducting the hearing, so directs, a true copy of the matter in proper form shall be received as an exhibit, and like copies delivered by the parties offering same to opposing parties, or their attorneys, appearing at the hearing, who shall be offered the opportunity to examine the book, paper or document, and to offer evidence in like manner other portions thereof if found to be material and relevant.

(3) The sheets of each exhibit and the lines of each sheet shall be numbered and if the exhibit consists of two (2) or more sheets, the first sheet or title page shall contain a brief statement of what the exhibit purports to show, with reference by sheet and line to illustrative or typical examples contained in the exhibit. Rate comparisons and other evidence shall be condensed into tables.

(4) Except as may be expressly permitted in particular instanc-

es, the commission shall not receive in evidence or consider as a part of the record any book, paper, or other document for consideration in connection with the proceeding after the close of the testimony.

(5) Upon motion of any party to a proceeding, any case in the commission's files or any document on file with the commission may be made a part of the record by "reference only." By reference only, the case or document made a part of the record shall not be physically incorporated into the record. Upon action in the Franklin Circuit Court, excerpts from any case or part of any document may be made a part of the record before the court, at the request of any party.

Section 12. Financial Exhibit. If this administrative regulation requires that a financial exhibit be annexed to the application, the exhibit shall cover operations for a twelve (12) month period, the period ending not more than ninety (90) days prior to the date the application is filed. The exhibit shall disclose the following information in the order indicated below:

(1) Amount and kinds of stock authorized;

(2) Amount and kinds of stock issued and outstanding;

(3) Terms of preference of preferred stock whether cumulative or participating, or on dividends or assets or otherwise;

(4) Brief description of each mortgage on property of applicant, giving date of execution, name of mortgagor, name of mortgagee, or trustee, amount of indebtedness authorized to be secured, and the amount of indebtedness actually secured, together with any sinking fund provisions;

(5) Amount of bonds authorized, and amount issued, giving the name of the public utility which issued the same, describing each class separately, and giving date of issue, face value, rate of interest, date of maturity, and how secured, together with amount of interest paid during the last fiscal year;

(6) Each note outstanding, giving date of issue, amount, date of maturity, rate of interest, in whose favor, together with amount of interest paid during the last fiscal year;

(7) Other indebtedness, giving same by classes and describing security, if any, with a brief statement of the devolution or assumption of any portion of the indebtedness upon or by person or corporation if the original liability has been transferred, together with amount of interest paid during the last fiscal year.;

(8) Rate and amount of dividends paid during the five (5) previous fiscal years, and the amount of capital stock on which dividends were paid each year; and

(9) Detailed income statement and balance sheet.

Section 13. Confidential Material. (1) All material on file with the commission shall be available for examination by the public unless the commission or the official custodian of the commission's records determines the material is confidential.

(2) Procedure for determining confidentiality of material submitted in a case.

(a) Any person requesting confidential treatment of any material shall file a motion that:

1. Sets forth specific grounds pursuant to KRS 61.878, upon which the commission should classify that material as confidential; and

2. Attaches one (1) copy of the material which identifies by underscoring, highlighting with transparent ink, or other reasonable means only those portions which unless redacted would disclose confidential material. Text pages or portions thereof which do not contain confidential material shall not be included in this identification.

(b) The motion, one (1) copy of the material which is identified by underscoring or highlighting, and ten (10) copies of the material with those portions obscured for which confidentiality is sought, shall be filed with the commission.

(c) The motion and one (1) copy of the material, with only those portions for which confidentiality is sought obscured, shall be served on all parties. The motion shall contain a certificate of service on all parties.

(d) The burden of proof to show that the material falls within the exclusions from disclosure requirements enumerated in KRS 61.878 shall be upon the party requesting confidential treatment.

(e) Any party may respond to a motion for confidential treatment within seven (7) days after it is filed with the commission.

(f) If the case is being conducted using electronic filing procedures set forth in Section 8 of this administrative regulation, the parties shall comply with those procedures except that an unobscured copy of the material for which confidentiality is sought shall not be transmitted electronically.

(3) Procedure for determining confidentiality of material submitted outside of a formal proceeding.

(a) Any person requesting confidential treatment of any material filed with the commission outside of a case shall submit a written request to the executive director that:

1. Sets forth specific grounds upon which the material should be classified as confidential; and

2. Attaches one (1) copy of the material which identifies by underscoring, highlighting with transparent ink, or other reasonable means only those portions which unless redacted would disclose confidential material. Text pages or portions thereof which do not contain confidential material shall not be included in this identification.

(b) The written request, one (1) copy of the material which is identified by underscoring or highlighting, and one (1) copy of the material with those portions obscured for which confidentiality is sought, shall be filed with the commission.

(c) The burden of proof to show that the material falls within the exclusions from disclosure requirements set forth in KRS 61.878 shall be upon the person requesting confidential treatment.

(d) The executive director, as official custodian of the commission's records, shall determine if the material falls within the exclusions from disclosure requirements set forth in KRS 61.878 and shall advise the requestor of the determination by letter.

(e) A person whose request for confidential treatment is denied by the executive director may petition the commission for confidential treatment of the material in accordance with the procedures set forth in subsection (2) of this section. The commission shall review the petition without regard to the executive director's determination.

(4) Pending commission action on a request or motion for confidential treatment, the material specifically identified shall be accorded confidential treatment.

(5) If the petition, motion or request for confidential treatment of material is denied, the material shall not be placed in the public record for twenty (20) days to allow the petitioner to seek any remedy afforded by law.

(6) Procedure for any party to request access to confidential material filed in any proceeding.

(a) A party to any proceeding before the commission shall not fail to respond to discovery by the commission or its staff or any other party to the proceeding on grounds of confidentiality. If any party responding to discovery requests seeks to have a portion or all of the response held confidential by the commission, it shall follow the procedures for petitioning for confidentiality contained in this administrative regulation. Any party's response to discovery requests shall be served upon all parties, with only those portions for which confidential treatment is sought obscured.

(b) If the commission grants confidential protection to the responsive material and if parties have not entered into protective agreements, then any party may petition the commission requesting access to the material on the grounds that it is essential to a meaningful participation in the proceeding. The petition shall include a description of efforts to enter into a protective agreement and any unwillingness to enter into a protective agreement shall be fully explained. Any party may respond to the petition within seven (7) days after it is filed with the commission. The commission shall determine if the petitioner is entitled to the material, and the manner and extent of the disclosure necessary to protect confidentiality.

(7) Requests for access to records pursuant to KRS 61.870 to 61.884. A time period prescribed in this section shall not limit the right of any person to request access to commission records pursuant to KRS 61.870 to 61.884. Upon a request filed pursuant to KRS 61.870 to 61.884, the commission shall respond in accordance with the procedure prescribed in KRS 61.880.

(8) Procedure for request for access to confidential material. Any person denied access to records requested pursuant to KRS

61.870 to 61.884 or to material deemed confidential by the commission in accordance with the procedures set out in this section, may obtain this information only pursuant to KRS 61.870 to 61.884 and other applicable law.

(9) Use of confidential material during formal proceedings. (a) Any party that files material that contains or reveals material that has previously been deemed confidential shall submit with the filed material:

1. A written notice identifying the date on which the confidentiality of the original material was determined and, if applicable, the case number in which the determination was made; and

2. One (1) copy of the filed material which is identified by underscoring or highlighting, and ten (10) copies of the material with those portions obscured for which confidentiality has previously been granted.

(b) Any material deemed confidential by the commission may be addressed and relied upon during a formal hearing by the procedure established in this paragraph.

1. The party seeking to address the confidential material shall advise the commission prior to the use of the material.

2. All persons other than commission employees not a party to a protective agreement related to the confidential material shall be excused from the hearing room during direct testimony and cross-examination directly related to confidential material.

3. Any portion of the record directly related to the confidential material shall be sealed.

(10) Material granted confidentiality which later becomes publicly available or otherwise no longer warrants confidential treatment.

(a) Unless the commission orders otherwise, confidential treatment shall be afforded to material for no more than two (2) years. At the end of this period, the person who sought confidential treatment for the material shall request that the material continue to be treated as confidential and shall demonstrate that the material still falls within the exclusions from disclosure requirements set forth in KRS 61.878. Absent any showing, the material shall be placed in the public record. If a request is not made for continued confidential treatment, the material shall be placed in the public record without notice to the person who originally requested confidential treatment.

(b) The petitioner who sought confidential protection shall inform the commission in writing at any time when any material granted confidentiality becomes publicly available.

(c) If the commission becomes aware that material granted confidentiality is publicly available or otherwise no longer qualifies for confidential treatment, it shall by order so advise the petitioner who sought confidential protection, giving ten (10) days to respond. If the commission finds that material has been disclosed by someone other than the person who requested confidential treatment, in violation of a protective agreement or commission order, the information shall not be deemed or considered to be publicly available and shall not be placed in the public record.

(d) The material shall not be placed in the public record for twenty (20) days following any order finding that the material no longer qualifies for confidential treatment to allow the petitioner to seek any remedy afforded by law.

Section 14. Applications. (1) Contents of application. All applications shall be by petition. The petition shall set forth the full name, mailing address, and electronic mail address of the applicant, and shall contain fully the facts on which the application is based, with a request for the order, authorization, permission, or certificate desired and a reference to the particular law requiring or providing for same.

(2) Articles of incorporation.

(a) If the applicant is a corporation, a certified copy of its articles of incorporation and all amendments, if any, shall be annexed to the application, or a written statement attesting that its articles and all amendments have been filed with the commission in a prior proceeding and referencing the case number of the prior proceeding.

(b) If the applicant is a limited liability company, a certified copy of its articles of organization and all amendments, if any, shall be annexed to the application, or a written statement attesting that its articles and all amendments have been filed with the commission in a prior proceeding and referencing the case number of the prior proceeding.

(c) If the applicant is a limited partnership, a certified copy of its limited partnership agreement and all amendments, if any, shall be annexed to the application, or a written statement attesting that its partnership agreement and all amendments have been filed with the commission in a prior proceeding and referencing the case number of the prior proceeding.

Section 15. Applications for Certificates of Public Convenience and Necessity. (1) Application to bid on a franchise pursuant to KRS 278.020(3). Upon application to the commission by the utility for a certificate of convenience and necessity authorizing the applicant to bid on a franchise, license, or permit offered by any governmental agency, the applicant shall submit with its application, the following:

(a) A copy of its articles of incorporation, partnership agreement, or articles of organization pursuant to Section 14(2) of this administrative regulation;

(b) The name of the governmental agency offering the franchise;

(c) The type of franchise offered; and

(d) A statement showing the need and demand for service. If the applicant is successful in acquiring the franchise, license or permit, it shall file a copy with the commission.

(2) New construction or extension. When application is made by the utility, person, firm, or corporation for a certificate that the present or future public convenience or necessity requires, or will require, the construction or extension of any plant, equipment, property or facility, the applicant, in addition to complying with Section 14 of this administrative regulation, shall submit the following data, either in the application or as attached exhibits:

(a) The facts relied upon to show that the proposed new construction is or will be required by public convenience or necessity;

(b) Copies of franchises or permits, if any, from the proper public authority for the proposed new construction or extension, if not previously filed with the commission;

(c) A full description of the proposed location, route, or routes of the new construction or extension, including a description of the manner in which same will be constructed, and also the names of all public utilities, corporations, or persons with whom the proposed new construction or extension is likely to compete;

(d) Maps to suitable scale showing the location or route of the proposed new construction or extension, as well as the location to scale of any like facilities owned by others located anywhere within the map area with adequate identification as to the ownership of the other facilities. The utility shall supply one (1) copy of each map in an electronic format and one (1) copy of each map in a paper format;

(e) The manner in detail in which it is proposed to finance the new construction or extension;

(f) An estimated cost of operation thirty (30) days after the proposed facilities are completed; and

(g) All other information necessary to afford the commission a complete understanding of the situation.

(3) Extensions in the ordinary course of business. A certificate of public convenience and necessity shall not be required for extensions that do not create wasteful duplication of plant, equipment, property or facilities, or conflict with the existing certificates or service of other utilities operating in the same area and under the jurisdiction of the commission that are in the general or contiguous area in which the utility renders service, and that do not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved, or will not result in increased charges to its customers.

(4) Renewal applications. Insofar as procedure is concerned, applications for a renewal of a certificate of convenience and necessity shall be treated as an original application.

Section 16. Applications for General Adjustments in Existing Rates. (1) All applications requesting a general adjustment in existing rates shall:

(a) Be supported by:

1. A twelve (12) month historical test period which may include adjustments for known and measurable changes; or

2. A fully forecasted test period; and

(b) Include:

1. A statement of the reason the adjustment is required;

2. If the utility is incorporated or is a limited partnership, a certificate of good standing or certificate of authorization dated within sixty (60) days of the date the application is filed;

3. A certified copy of a certificate of assumed name as required by KRS 365.015 or a statement that a certificate is not necessary;

4. Any new or revised tariff sheets in a format which complies with 807 KAR 5:011 with an effective date not less than thirty (30) days from the date the application is filed;

5. Any new or revised tariff sheets identified in compliance with 807 KAR 5:011, shown either by:

a. Providing the present and proposed tariffs in comparative form on the same sheet side by side or on facing sheets side by side; or

b. Providing a copy of the present tariff indicating proposed additions by italicized inserts or underscoring and striking over proposed deletions; and

6. A statement that customer notice has been given in compliance with subsections (3) and (4) of this section with a copy of the notice.

7. For the purposes of this administrative regulation, an affiliate is an entity:

a. That is wholly owned by a utility;

b. In which a utility has a controlling interest;

c. That wholly owns a utility;

d. That has a controlling interest in a utility; or

e. That is under common control with the utility.

8. For the purposes of this administrative regulation, a utility, or other entity, shall be deemed to have a controlling interest in, or be under common control with, an entity or utility if it:

a. Directly or indirectly has the power to direct, or to cause the direction of, the management or policies of any entity; and

b. Exercises that power:

(i) Through one (1) or more intermediary companies, or alone;

(ii) In conjunction with, or pursuant to an agreement;

(iii) Through ownership of ten (10) percent or more of the voting securities;

(iv) Through common directors, officers, stockholders, voting or holding trusts, associated companies;

(v) Contract; or

(vi) Any other direct or indirect means.

(2) Notice of intent. A utility with gross annual revenues greater than $5,000,000 shall notify the commission in writing of intent to file a rate application at least thirty (30) days, but not more than sixty (60) days, prior to filing its application. The notice of intent shall state whether the rate application will be supported by a historical test period or a fully forecasted test period. When filing the notice of intent, an application may be made to the commission for permission to use an abbreviated form of newspaper notice of proposed rate increases provided the notice includes a coupon which may be used to obtain a copy from the applicant of the full schedule of increases or rate changes. The applicant shall also transmit by electronic mail a copy of the notice in a portable document format to the Attorney General's Office of Rate Intervention at rateintervention@ag.ky.gov.

(3) Manner of notification. (a) If the utility has twenty (20) or fewer customers or is a sewage utility, it shall:

1. Mail written notice to each customer no later than the date on which the application is filed with the commission. The notice shall meet the requirements set forth in subsection (4) of this section;

2. Post at its place of business no later than the filed date of the application a sheet containing the information provided in the written notice to its customers; and

3. Keep the notice posted until the commission has issued a final decision on the application.

(b) An applicant that has more than twenty (20) customers and is not a sewage utility shall post at its place of business a sheet containing the information required by subsection (4) of this section and shall:

1. Include notice with customer bills mailed by the date the application is filed;

2. Publish notice in a trade publication or newsletter going to all customers by the date the application is filed; or

3. Publish notice once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in the utility's service area, the first publication to be made by the date the application is filed.

(c) Utilities providing service in multiple counties may use a combination of the notice methods listed in paragraph (b) of this subsection.

(4) Notice Requirements. Each notice shall contain the following information:

(a) The present rates and proposed rates for each customer class to which the proposed rates will apply;

(b) The amount of the change requested in both dollar amounts and percentage change for customer classification to which the proposed rate change will apply;

(c) The amount of the average usage and the effect upon the average bill for each customer class to which the proposed rate change will apply, except for local exchange companies which shall include the effect upon the average bill for each customer class for the proposed rate change in basic local service;

(d) A statement that the rates contained in this notice are the rates proposed by (name of utility) but that the Public Service Commission may order rates to be charged that differ from the proposed rates contained in this notice;

(e) A statement that any corporation, association, or person may within thirty (30) days after the initial publication or mailing of notice of the proposed rate changes, submit a written request to intervene to the Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602 that sets forth the grounds for the request including the status and interest of the party, and states that intervention may be granted beyond the thirty (30) day period for good cause shown;

(f) A statement that any person may examine this filing and any other documents the utility has filed with the Public Service Commission at the offices of (the name of the utility) located at (the utility's address) and on the utility's Web site at (the utility's Web site address), if the utility maintains a public Web site; and

(g) A statement that this filing and any other related documents can be found on the Public Service Commission's Web site at http://psc.ky.gov/.

(5) Proof of notice. An applicant shall file with the commission no later than forty-five (45) days from the date of the initial filing:

(a) If its notice is published, an affidavit from the publisher verifying the notice was published, including the dates of the publication with an attached copy of the published notice;

(b) If its notice is published in a trade publication or newsletter going to all customers, an affidavit from an authorized representative of the utility verifying the trade publication or newsletter was mailed; or

(c) If the notice is mailed, an affidavit from an authorized representative of the utility verifying the notice was mailed.

(6) Additional notice requirements. In addition to the notice requirements listed in subsection (4) of this section:

(a) A utility shall post a sample copy of the required notification at its place of business no later than the date on which the application is filed and shall not remove the notification until issuance of a final order from the commission establishing the utility's approved rates; and

(b) A utility that maintains a public web site shall, within seven (7) days of filing an application, post a copy of the public notice as well as a hyperlink to its filed application on the commission's Web site and shall not remove the notification until issuance of a final order from the commission establishing the utility's approved rates.

(7) Abbreviated form of notice. Upon written request, the commission may grant a utility permission to use an abbreviated form of published notice of the proposed rates provided the notice includes a coupon which may be used to obtain all of the required information.

(8) Notice of hearing scheduled by the commission upon application by a utility for a general adjustment in rates shall be advertised by the utility by newspaper publication in the areas that will be

affected in compliance with KRS 424.300.

(9) All applications supported by a historical test period shall include the following information or a statement explaining why the required information does not exist and is not applicable to the utility's application:

(a) A complete description and quantified explanation for all proposed adjustments with proper support for any proposed changes in price or activity levels, and any other factors which may affect the adjustment;

(b) If the utility has gross annual revenues greater than $5,000,000, the prepared testimony of each witness the utility proposes to use to support its application;

(c) If the utility has gross annual revenues less than $5,000,000, the prepared testimony of each witness the utility proposes to use to support its application or a statement that the utility does not plan to submit any prepared testimony;

(d) A statement estimating the effect that each new rate will have upon the revenues of the utility including, at minimum, the total amount of revenues resulting from the increase or decrease and the percentage of the increase or decrease;

(e) If the utility provides electric, gas, water, or sewer service, the effect upon the average bill for each customer classification to which the proposed rate change will apply;

(f) If the utility is an incumbent local exchange company, the effect upon the average bill for each customer class for the proposed rate change in basic local service;

(g) A detailed analysis of customers' bills whereby revenues from the present and proposed rates can be readily determined for each customer class;

(h) A summary of the utility's determination of its revenue requirements based on return on net investment rate base, return on capitalization, interest coverage, debt service coverage, or operating ratio, with supporting schedules;

(i) A reconciliation of the rate base and capital used to determine its revenue requirements;

(j) A current chart of accounts if more detailed than the Uniform System of Accounts prescribed by the commission;

(k) The independent auditor's annual opinion report, with any written communication from the independent auditor to the utility which indicates the existence of a material weakness in the utility's internal controls;

(l) The most recent Federal Energy Regulatory Commission or Federal Communication Commission audit reports;

(m) The most recent Federal Energy Regulatory Commission Form 1 (electric), Federal Energy Regulatory Commission Form 2 (gas), or Public Service Commission Form T (telephone);

(n) A summary of the utility's latest depreciation study with schedules by major plant accounts, except that telecommunications utilities that have adopted the commission's average depreciation rates shall provide a schedule that identifies the current and test period depreciation rates used by major plant accounts. If the required information has been filed in another commission case, a reference to that case's number and style shall be sufficient;

(o) A list of all commercially available or in-house developed computer software, programs, and models used in the development of the schedules and work papers associated with the filing of the utility's application. This list shall include each software, program, or model; what the software, program, or model was used for; identify the supplier of each software, program, or model; a brief description of the software, program, or model; the specifications for the computer hardware and the operating system required to run the program;

(p) Prospectuses of the most recent stock or bond offerings;

(q) Annual report to shareholders, or members, and statistical supplements covering the two (2) most recent years from the utility's application filing date;

(r) The monthly managerial reports providing financial results of operations for the twelve (12) months in the test period;

(s) A copy of the utility's annual report on Form 10-K as filed with the Securities and Exchange Commission for the most recent two (2) years, any Form 8-K issued during the past two (2) years, and any Form 10-Q issued during the past six (6) quarters updated as current information becomes available;

(t) If the utility had any amounts charged or allocated to it by an affiliate or general or home office or paid any monies to an affiliate or general or home office during the test period or during the previous three (3) calendar years, the utility shall file:

1. A detailed description of the method and amounts allocated or charged to the utility by the affiliate or general or home office for each charge allocation or payment;

2. An explanation of how the allocator for the test period was determined; and

3. All facts relied upon, including other regulatory approval, to demonstrate that each amount charged, allocated, or paid during the test period was reasonable;

(u) If the utility provides gas, electric, water, or sewage utility service and has annual gross revenues greater than $5,000,000, a cost of service study based on a methodology generally accepted within the industry and based on current and reliable data from a single time period; and

(v) Incumbent local exchange carriers with fewer than 50,000 access lines shall not be required to file cost of service studies, except as specifically directed by the commission. Local exchange carriers with more than 50,000 access lines shall file:

1. A jurisdictional separations study consistent with Part 36 of the Federal Communications Commission's rules and regulations; and

2. Service specific cost studies to support the pricing of all services that generate annual revenue greater than $1,000,000, except local exchange access:

a. Based on current and reliable data from a single time period; and

b. Using generally recognized fully allocated, embedded, or incremental cost principles.

(10) Upon good cause shown, a utility may request pro forma adjustments for known and measurable changes to ensure fair, just and reasonable rates based on the historical test period. The following information shall be filed with applications requesting pro forma adjustments or a statement explaining why the required information does not exist and is not applicable to the utility's application:

(a) A detailed income statement and balance sheet reflecting the impact of all proposed adjustments;

(b) The most recent capital construction budget containing at least the period of time as proposed for any pro forma adjustment for plant additions;

(c) For each proposed pro forma adjustment reflecting plant additions, provide the following information:

1. The starting date of the construction of each major component of plant;

2. The proposed in-service date;

3. The total estimated cost of construction at completion;

4. The amount contained in construction work in progress at the end of the test period;

5. A schedule containing a complete description of actual plant retirements and anticipated plant retirements related to the pro forma plant additions including the actual or anticipated date of retirement;

6. The original cost, cost of removal and salvage for each component of plant to be retired during the period of the proposed pro forma adjustment for plant additions;

7. An explanation of any differences in the amounts contained in the capital construction budget and the amounts of capital construction cost contained in the pro forma adjustment period; and

8. The impact on depreciation expense of all proposed pro forma adjustments for plant additions and retirements;

(d) The operating budget for each month of the period encompassing the pro forma adjustments; and

(e) The number of customers to be added to the test period end level of customers and the related revenue requirements impact for all pro forma adjustments with complete details and supporting work papers.

(11) All applications requesting a general adjustment in rates supported by a fully forecasted test period shall comply with the requirements established in this subsection.

(a) The financial data for the forecasted period shall be presented in the form of pro forma adjustments to the base period.

(b) Forecasted adjustments shall be limited to the twelve (12)

months immediately following the suspension period.

(c) Capitalization and net investment rate base shall be based on a thirteen (13) month average for the forecasted period.

(d) After an application based on a forecasted test period is filed, there shall be no revisions to the forecast, except for the correction of mathematical errors, unless the revisions reflect statutory or regulatory enactments that could not, with reasonable diligence, have been included in the forecast on the date it was filed. There shall be no revisions filed within thirty (30) days of a scheduled hearing on the rate application.

(e) The commission may require the utility to prepare an alternative forecast based on a reasonable number of changes in the variables, assumptions, and other factors used as the basis for the utility's forecast.

(f) The utility shall provide a reconciliation of the rate base and capital used to determine its revenue requirements.

(12) All applications requesting a general adjustment in rates supported by a fully forecasted test period shall include the following or a statement explaining why the required information does not exist and is not applicable to the utility's application:

(a) The prepared testimony of each witness the utility proposes to use to support its application which shall include testimony from the utility's chief officer in charge of Kentucky operations on the existing programs to achieve improvements in efficiency and productivity, including an explanation of the purpose of the program;

(b) The utility's most recent capital construction budget containing at a minimum a three (3) year forecast of construction expenditures;

(c) A complete description, which may be filed in prefiled testimony form, of all factors used in preparing the utility's forecast period. All econometric models, variables, assumptions, escalation factors, contingency provisions, and changes in activity levels shall be quantified, explained, and properly supported;

(d) The utility's annual and monthly budget for the twelve (12) months preceding the filing date, the base period and forecasted period;

(e) A statement of attestation signed by the utility's chief officer in charge of Kentucky operations which shall provide:

1. That the forecast is reasonable, reliable, made in good faith and that all basic assumptions used in the forecast have been identified and justified;

2. That the forecast contains the same assumptions and methodologies as used in the forecast prepared for use by management, or an identification and explanation for any differences that exist; and

3. That productivity and efficiency gains are included in the forecast;

(f) For each major construction project which constitutes five (5) percent or more of the annual construction budget within the three (3) year forecast, the following information shall be filed:

1. The date the project was started or estimated starting date;

2. The estimated completion date;

3. The total estimated cost of construction by year exclusive and inclusive of allowance for funds used during construction ("AFUDC") or interest during construction credit; and

4. The most recent available total costs incurred exclusive and inclusive of AFUDC or interest during construction credit;

(g) For all construction projects which constitute less than five (5) percent of the annual construction budget within the three (3) year forecast, the utility shall file an aggregate of the information requested in paragraph (f)3 and 4 of this subsection;

(h) A financial forecast corresponding to each of the three (3) forecasted years included in the capital construction budget. The financial forecast shall be supported by the underlying assumptions made in projecting the results of operations and shall include the following information:

1. Operating income statement (exclusive of dividends per share or earnings per share);

2. Balance sheet;

3. Statement of cash flows;

4. Revenue requirements necessary to support the forecasted rate of return;

5. Load forecast including energy and demand (electric);

6. Access line forecast (telephone);

7. Mix of generation (electric);

8. Mix of gas supply (gas);

9. Employee level;

10. Labor cost changes;

11. Capital structure requirements;

12. Rate base;

13. Gallons of water projected to be sold (water);

14. Customer forecast (gas, water);

15. MCF sales forecasts (gas);

16. Toll and access forecast of number of calls and number of minutes (telephone); and

17. A detailed explanation of any other information provided;

(i) The most recent Federal Energy Regulatory Commission or Federal Communications Commission audit reports;

(j) The prospectuses of the most recent stock or bond offerings;

(k) The most recent Federal Energy Regulatory Commission Form 1 (electric), Federal Energy Regulatory Commission Form 2 (gas), or Public Service Commission Form T (telephone);

(l) The annual report to shareholders or members and the statistical supplements covering the most recent two (2) years from the application filing date;

(m) The current chart of accounts if more detailed than the Uniform System of Accounts chart prescribed by the commission;

(n) The latest twelve (12) months of the monthly managerial reports providing financial results of operations in comparison to the forecast;

(o) Complete monthly budget variance reports, with narrative explanations, for the twelve (12) months immediately prior to the base period, each month of the base period, and any subsequent months, as they become available;

(p) A copy of the utility's annual report on Form 10-K as filed with the Securities and Exchange Commission for the most recent two (2) years, and any Form 8-K issued during the past two (2) years, and any Form 10-Q issued during the past six (6) quarters;

(q) The independent auditor's annual opinion report, with any written communication from the independent auditor to the utility which indicates the existence of a material weakness in the utility's internal controls;

(r) The quarterly reports to the stockholders for the most recent five (5) quarters;

(s) The summary of the latest depreciation study with schedules itemized by major plant accounts, except that telecommunications utilities that have adopted the commission's average depreciation rates shall provide a schedule that identifies the current and base period depreciation rates used by major plant accounts. If the required information has been filed in another commission case, a reference to that case's number and style shall be sufficient;

(t) A list of all commercially available or in-house developed computer software, programs, and models used in the development of the schedules and work papers associated with the filing of the utility's application. This list shall include each software, program, or model; what the software, program, or model was used for; identify the supplier of each software, program, or model; a brief description of the software, program, or model; the specifications for the computer hardware and the operating system required to run the program;

(u) If the utility had any amounts charged or allocated to it by an affiliate or a general or home office or paid any monies to an affiliate or a general or home office during the base period or during the previous three (3) calendar years, the utility shall file:

1. A detailed description of the method and amounts allocated or charged to the utility by the affiliate or general or home office for each allocation or payment;

2. The method and amounts allocated during the base period and the method and estimated amounts to be allocated during the forecasted test period;

3. An explanation of how the allocator for both the base period and the forecasted test period were determined; and

4. All facts relied upon, including other regulatory approval, to demonstrate that each amount charged, allocated or paid during the base period is reasonable;

(v) If the utility provides gas, electric, sewage utility, or water

utility service and has annual gross revenues greater than $5,000,000, a cost of service study based on a methodology generally accepted within the industry and based on current and reliable data from a single time period; and

(w) Incumbent local exchange carriers with fewer than 50,000 access lines shall not be required to file cost of service studies, except as specifically directed by the commission. Local exchange carriers with more than 50,000 access lines shall file:

1. A jurisdictional separations study consistent with Part 36 of the Federal Communications Commission's rules and regulations; and

2. Service specific cost studies to support the pricing of all services that generate annual revenue greater than $1,000,000 except local exchange access:

a. Based on current and reliable data from a single time period; and

b. Using generally recognized fully allocated, embedded, or incremental cost principles.

(13) All applications seeking a general adjustment in rates supported by a forecasted test period shall include the following data:

(a) A jurisdictional financial summary for both the base period and the forecasted period which details how the utility derived the amount of the requested revenue increase;

(b) A jurisdictional rate base summary for both the base period and the forecasted period with supporting schedules which include detailed analyses of each component of the rate base;

(c) A jurisdictional operating income summary for both the base period and the forecasted period with supporting schedules which provide breakdowns by major account group and by individual account;

(d) A summary of jurisdictional adjustments to operating income by major account with supporting schedules for individual adjustments and jurisdictional factors;

(e) A jurisdictional federal and state income tax summary for both the base period and the forecasted period with all supporting schedules of the various components of jurisdictional income taxes;

(f) Summary schedules for both the base period and the forecasted period (the utility may also provide a summary segregating those items it proposes to recover in rates) of organization membership dues; initiation fees; expenditures at country clubs; charitable contributions; marketing, sales, and advertising expenditures; professional service expenses; civic and political activity expenses; expenditures for employee parties and outings; employee gift expenses; and rate case expenses;

(g) Analyses of payroll costs including schedules for wages and salaries, employee benefits, payroll taxes, straight time and overtime hours, and executive compensation by title;

(h) A computation of the gross revenue conversion factor for the forecasted period;

(i) Comparative income statements (exclusive of dividends per share or earnings per share), revenue statistics and sales statistics for the five (5) most recent calendar years from the application filing date, the base period, the forecasted period, and two (2) calendar years beyond the forecast period;

(j) A cost of capital summary for both the base period and forecasted period with supporting schedules providing details on each component of the capital structure;

(k) Comparative financial data and earnings measures for the ten (10) most recent calendar years, the base period, and the forecast period;

(l) A narrative description and explanation of all proposed tariff changes;

(m) A revenue summary for both the base period and forecasted period with supporting schedules which provide detailed billing analyses for all customer classes; and

(n) A typical bill comparison under present and proposed rates for all customer classes.

(14) The commission shall notify the utility of any deficiencies in the application within thirty (30) days of receiving it. For the application to be considered filed with the commission, the utility shall cure any deficiencies within thirty (30) days of the commission giving notice of any deficiencies.

(15) A request for waiver of any of the provisions of these filing requirements shall set forth the specific reasons for the request. The commission shall grant the request for waiver upon good cause shown by the utility. In determining whether good cause has been shown, the commission may consider:

(a) Whether other information which the utility would provide if the waiver is granted is sufficient to allow the commission to effectively and efficiently review the rate application;

(b) Whether the information which is the subject of the waiver request is normally maintained by the utility or reasonably available to it from the information which it maintains; and

(c) The expense to the utility in providing the information which is the subject of the waiver request.

Section 17. Application for Authority to Issue Securities, Notes, Bonds, Stocks or Other Evidences of Indebtedness. (1) When application is made by the utility for an order authorizing the issuance of securities, notes, bonds, stocks or other evidences of indebtedness payable at periods of more than two (2) years from the date thereof, under the provisions of KRS 278.300, the application, in addition to complying with the requirements of Section 14 of this administrative regulation, shall contain:

(a) A general description of the applicant's property and the field of its operation, together with a statement of the original cost of the same and the cost to the applicant, if it is impossible to state the original cost, the facts creating the impossibility shall be stated;

(b) The amount and kinds of stock, if any, which the utility desires to issue, and, if preferred, the nature and extent of the preference; the amount of notes, bonds or other evidences of indebtedness, if any, which the utility desires to issue, with terms, rate of interest and whether and how to be secured;

(c) The use to be made of the proceeds of the issue of any securities, notes, bonds, stocks or other evidence of indebtedness with a statement indicating how much is to be used for the acquisition of property, the construction, completion, extension, or improvement of facilities, the improvement of service, the maintenance of service, and the discharge or refunding of obligations;

(d) The property in detail which is to be acquired, constructed, improved, or extended with its cost, a detailed description of the contemplated construction, completion, extension, or improvement of facilities set forth in a manner whereby an estimate of the cost may be made, a statement of the character of the improvement of service proposed, and of the reasons why the service should be maintained from its capital. Whether any contracts have been made for the acquisition of any property, or for any construction, completion, extension or improvement of facilities, or for the disposition of any of the securities, notes, bonds, stocks or other evidence of indebtedness which it proposes to issue or the proceeds thereof and if any contracts have been made, copies thereof shall be annexed to the petition;

(e) If it is proposed to discharge or refund obligations, a statement of the nature and description of the obligations including their par value, the amount for which they were actually sold, the associated expenses, and the application of the proceeds from the sales. If notes are to be refunded, the petition shall show the date, amount, time, rate of interest, and payee of each and the purpose for which their proceeds were expended; and

(f) Any other facts as may be pertinent to the application.

(2) The following exhibits shall be filed with the application:

(a) Financial exhibit (see Section 12 of this administrative regulation);

(b) Copies of trust deeds or mortgages, if any, unless they have already been filed with the commission, in which case reference shall be made, by style and case number, to the proceeding in which the trust deeds or mortgages have been filed; and

(c) Maps and plans of the proposed property and constructions together with detailed estimates in a form that they can be reviewed by the commission's engineering division. Estimates shall be arranged according to the uniform system of accounts prescribed by the commission for the various classes of utilities.

Section 18. Petition for Declaratory Order. (1) The commission may, upon application by any person substantially affected, issue a declaratory order with respect to the jurisdiction of the commission,

the applicability to any person, property or state of facts of any order or administrative regulation of the commission or provision of KRS Chapter 278, or with respect to the meaning and scope of any order or administrative regulation of the commission or provision of KRS Chapter 278.

(2) An application for declaratory order shall:

(a) Be in writing;

(b) Contain a complete, accurate, and concise statement of the facts upon which the application is based;

(c) Fully disclose the applicant's interest;

(d) Identify all statutes, administrative regulations, and orders to which the application relates order or administrative regulation; and

(e) State the applicant's proposed resolution or conclusion.

(3) The commission may in its discretion direct that a copy of the application for a declaratory order be served on any person the commission deems may be affected by the application.

(4) Responses, if any, to an application for declaratory order shall be filed with the commission within twenty-one (21) days after the date on which the application was filed with the commission or within the time the commission directs; and be served upon the applicant.

(5) Replies to responses may be filed with the commission within fourteen (14) days after service, or within the time the commission directs.

(6) All applications, responses and replies containing allegations of fact shall be supported by affidavit or verified.

(7) The commission may in its sole discretion dispose of an application for a declaratory order solely on the basis of the written submissions filed before it.

(8) The commission may take any action necessary to ensure a complete record, to include holding oral arguments on the application and requiring the production of additional documents and materials.

Section 19. Formal Complaints. (1) Contents of complaint. Each complaint shall be headed "Before the Public Service Commission," shall set out the names of the complainant and the name of the defendant, and shall state:

(a) The full name and post office address of the complainant;

(b) The full name and post office address of the defendant; and

(c) Fully, clearly, and with reasonable certainty, the act or thing done or omitted to be done, of which complaint is made, with a reference, where practicable, to the law, order, or section, and subsections, of which a violation is claimed, and other matters, or facts, if any, as may be necessary to acquaint the commission fully with the details of the alleged violation. The complainant shall set forth definitely the exact relief which is desired.

(2) Signature. The complaint shall be signed by the complainant or his or her attorney, if any, and if signed by an attorney, shall show the attorney's post office address. Complaints by corporations or associations, or any other organization having the right to file a complaint, shall be signed by its attorney.

(3) Number of copies required. When the complainant files his or her original complaint, the complainant shall also file two (2) more copies than the number of persons or corporations to be served.

(4) Procedure on filing of complaint.

(a) Upon the filing of a complaint, the commission shall immediately examine the same to ascertain whether it establishes a prima facie case and conforms to this administrative regulation. If the commission is of the opinion that the complaint does not establish a prima facie case or does not conform to this administrative regulation, it shall notify the complainant or his or her attorney to that effect, and opportunity may be given to amend the complaint within a specified time. If the complaint is not so amended within the time or the extension as the commission, for good cause shown, may grant, it shall be dismissed.

(b) If the commission is of the opinion that the complaint, either as originally filed or as amended, does establish a prima facie case and conforms to this administrative regulation, the commission shall serve an order upon any person complained of under the hand of its executive director and attested by its seal, accompanied by a copy of the complaint, directed to the person and requiring that the matter complained of be satisfied, or that the complaint be answered in writing within ten (10) days from the date of service of the order, provided that the commission may, in particular cases, require the answer to be filed within a shorter time.

(5) Satisfaction of the complaint. If the defendant desires to satisfy the complaint, he or she shall submit to the commission, within the time allowed for satisfaction or answer, a statement of the relief which the defendant is willing to give. Upon the acceptance of this offer by the complainant and the approval of the commission, further proceedings shall not be taken.

(6) Answer to complaint. If the complainant is not satisfied with the relief offered, the person complained of shall file an answer to the complaint, with certificate of service on other endorsed parties, within the time specified in the order or the extension as the commission, for good cause shown, may grant. The answer shall contain a specific denial of the material allegations of the complaint as controverted by the defendant and also a statement of any new matter constituting a defense. If the answering party has no information or belief upon the subject sufficient to enable him or her to answer an allegation of the complaint, the answering party may so state in the answer and place the denial upon that ground.

Section 20. Informal Complaints. (1) Informal complaints shall be made to the commission's division of consumer services in any manner that specifically states the complainant's concerns and identifies the utility.

(2) The commission's division of consumer services shall address by correspondence or other means the complaint. If an informal complaint is referred to a utility, the utility shall acknowledge to the commission's division of consumer services referral of the complaint and shall report on its efforts to contact the complainant within three (3) business days of the referral, or a lesser period as commission staff may require. If commission staff requires a period less than three (3) business days for a response, that period shall be reasonable under the circumstances.

(3) Upon resolution of the informal complaint, the utility shall notify the commission's division of consumer services.

(4) In the event of failure to bring about satisfaction of the complaint because of the inability of the parties to agree as to the facts involved, or from other causes, the proceeding shall be held to be without prejudice to the complainant's right to file and prosecute a formal complaint whereupon the informal proceedings shall be discontinued.

Section 21. Deviations from Rules. In special cases, for good cause shown, the commission may permit deviations from these rules.

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

(a) "FERC Form-1", Annual Report of Major Electric Utilities, Licensees and Others, March 2007;

(b) "FERC Form-2", Annual Report of Major Natural Gas Companies, December 2007;

(c) "PSC Notice of Electronic Filing Procedures Form", July 2012;

(d) "PSC Form-T (telephone)", August 2005;

(e) "SEC Form-8K", January 2012;

(f) "SEC Form-10K", January 2012; and

(g) "SEC Form-10Q", January 2012;

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at http://psc.ky.gov/.[~~Section 1. General Offices and Hearings. (1) The commission will be in continuous session for the performance of administrative duties.~~

~~(2) Meetings of the commission for the consideration of all matters requiring formal hearings will be held on such days, at such hours and at such places as the commission may designate.~~

~~(3) Notice of hearing will be given by the secretary to parties to proceedings before the commission, except when a hearing is not concluded on the day appointed therefor and verbal announcement is made by the presiding commissioner or hearing examiner of an~~

~~adjourned date. Verbal announcements so made shall be deemed due notice of continued hearing.~~

~~Section 2. Secretary to Furnish Information. (1) Upon request, the secretary will advise any party as to the form of a petition, complaint, answer, application or other paper desired to be filed; and he will make available from the commission's files, upon request, any document or record pertinent to any matter before the commission.~~

~~(2) The secretary may reject for filing any document which on its face does not comply with the rules and administrative regulations of the commission.~~

~~Section 3. General Matters Pertaining to All Formal Proceedings. (1) Address of the commission. All communications should be addressed to "Public Service Commission, Frankfort, Kentucky."~~

~~(2) Case numbers and styles. Each matter coming formally before the commission will be known as a case and will receive a number and style, descriptive of the subject matter. Such number and style shall be placed on all subsequent papers in such case.~~

~~(3) Form of papers filed. All pleadings and applications filed with the commission in formal proceedings shall be printed or typewritten on one (1) side of the paper only, and typewriting shall be double spaced.~~

~~(4) Signing of pleadings. Every pleading of a party represented by an attorney shall be signed by at least one (1) attorney of record in his individual name and shall state his address. Except when otherwise specifically provided by statute, pleadings need not be verified or accompanied by affidavit.~~

~~(5) Amendment. At its discretion, the commission may allow any complaint, application, answer or other paper to be amended or corrected or any omission supplied therein.~~

~~(6) Witnesses and subpoenas.~~

~~(a) Upon the application of any party to a proceeding, subpoenas requiring the attendance of witnesses for the purpose of taking testimony may be signed and issued by a member of the commission.~~

~~(b) Subpoenas for the production of books, accounts, papers or records (unless directed to issue by the commission on its own authority) will be issued only at the discretion of the commission, or any commissioner, upon application in writing, stating as nearly as possible the books, accounts, papers or records desired to be produced.~~

~~(7) Service of process. When any party has appeared by attorney, service upon such attorney will be deemed proper service upon the party.~~

~~(8) Intervention and parties. In any formal proceeding, any person who wishes to become a party to a proceeding before the commission may by timely motion request that he be granted leave to intervene. Such motion shall include his name and address and the name and address of any party he represents and in what capacity he is employed by such party.~~

~~(a) Each person granted leave to intervene shall be considered as making a limited intervention unless he submits to the secretary a written request for full intervention. A person making only a limited intervention shall be entitled to the full rights of a party at the hearing in which he appears and shall be served with the commission's order, but he shall not be served with filed testimony, exhibits, pleadings, correspondence and all other documents submitted by parties. A person making a limited appearance will not be certified as a party for the purposes of receiving service of any petition for rehearing or petition for judicial review.~~

~~(b) If a person granted leave to intervene desires to be served with filed testimony, exhibits, pleadings, correspondence and all other documents submitted by parties, and to be certified as a party for the purposes of receiving service of any petition for rehearing or petition for judicial review, he shall submit in writing to the secretary a request for full intervention, which shall specify his interest in the proceeding. If the commission determines that a person has a special interest in the proceeding which is not otherwise adequately represented or that full intervention by party is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings, such person shall be granted full intervention.~~

~~Section 4. Hearings and Rehearings. (1) When hearings will be granted. Except as otherwise determined in specific cases, the commission will grant a hearing in the following classes of cases:~~

~~(a) When an order to satisfy a complaint or to make answer thereto has been made and the corporation or person complained of has not satisfied the complaint to the satisfaction of the commission.~~

~~(b) When application has been made in a formal proceeding.~~

~~(2) Publication of notice. Upon the filing of any application the commission may, in its discretion, give all other corporations or persons who may be affected thereby an opportunity to be heard by service upon them of a copy of the petition or by publication of the substance thereof, at the expense of the applicant, for such length of time and in such newspaper or newspapers as the commission may designate. In such cases the form of notice will be prepared by the secretary, and a proof of the publication thereof must be filed at or before the hearing.~~

~~(3) Investigation on commission's own motion. The commission may at any time, on its own motion, make investigations and order hearings into any act or thing done or omitted to be done by the public utility, which the commission may believe is in violation of any provision of law or of any order or administrative regulation of the commission. It may also through its own experts or employees, or otherwise, obtain such evidence as it may consider necessary or desirable in any formal proceeding in addition to the evidence presented by the parties.~~

~~(4) Conferences with commission staff. In order to provide opportunity for settlement of a proceeding or any of the issues therein, an informal conference with the commission staff may be arranged through the secretary of the commission either prior to, or during the course of hearings in any proceeding, at the request of any party.~~

~~(5) Conduct of hearings. Hearings will be conducted before the commission or a commissioner or before a person designated by the commission to conduct a specific hearing.~~

~~(6) Stipulation of facts. By a stipulation in writing, filed with the secretary, the parties to any proceeding or investigation by the commission may agree upon the facts or any portion of the facts involved in the controversy, which stipulation shall be regarded and used as evidence at the hearing.~~

~~(7) Testimony. All testimony given before the commission will be given under oath or affirmation.~~

~~(8) Objections and exceptions. When objections are made to the admission or exclusion of evidence before the commission, the grounds relied upon shall be stated briefly. Formal exceptions are unnecessary and will not be taken to rulings therein.~~

~~(9) Transcript of evidence. The commission will cause to be made a stenographic record of all public hearings and such copies of the transcript thereof as it requires for its own purposes. Participants desiring copies of such transcripts may obtain the same from the official reporter upon payment of the fees fixed therefor.~~

~~(10) Briefs and petitions for rehearing. All briefs and petitions for rehearing in any proceeding must be accompanied with notice, showing service upon all other parties or their attorneys, and, in addition to the filed original, ten (10) copies of each such document shall be furnished for the use of the commission.~~

~~(11) Filing of briefs. All briefs must be filed within the time fixed, and the commission may refuse to consider any brief filed thereafter. Applications for extensions of time to file briefs must be made to the commission in writing.~~

~~(12) Form of briefs. All briefs filed with the commission shall be in the form prescribed by the commission.~~

~~Section 5. Documentary Evidence. (1) If documentary evidence is offered, the commission, in lieu of requiring the originals to be filed may, in its discretion, accept certified, or otherwise authenticated, copies of such documents or such portions of the same as may be relevant, or may require such evidence to be transcribed as a part of the record.~~

~~(2) Where relevant and material matter offered in evidence by any party is embraced in a book, paper or document containing other matter not material or relevant the party must plainly desig-~~

~~nate the matter so offered. If such immaterial matter unnecessarily encumbers the record, such book, paper or document will not be received in evidence, but may be described for identification, and if properly authenticated, the relevant and material matter may be read into the record, or if the commission, or commissioner conducting the hearing, so directs, a true copy of such matter in proper form shall be received as an exhibit, and like copies delivered by the parties offering same to opposing parties, or their attorneys, appearing at the hearing, who shall be offered the opportunity to examine such book, paper or document, and to offer evidence in like manner other portions thereof if found to be material and relevant.~~

~~(3) Whenever practicable the sheets of each exhibit and the lines of each sheet shall be numbered and if the exhibit consists of two (2) or more sheets, the first sheet or title page shall contain a brief statement of what the exhibit purports to show, with reference by sheet and line to illustrative or typical examples contained in the exhibit. Wherever practicable, rate comparisons and other such evidence shall be condensed into tables.~~

~~(4) Except as may be expressly permitted in particular instances, the commission will not receive in evidence or consider as a part of the record any book, paper or other document for consideration in connection with the proceeding after the close of the testimony.~~

~~(5) Upon motion of any party to a proceeding, any case in the commission's files or any document on file with the commission, at the discretion of the commission may be made a part of the record by "reference only." By reference only, the case or document made a part of the record will not be physically incorporated into the record. Upon action in the Franklin Circuit Court, excerpts from any case or part of any document may be made a part of the record before such court, at the instance of any party.~~

~~Section 6. Financial Exhibit. Whenever in these rules it is provided that a financial exhibit shall be annexed to the application, the said exhibit shall cover operations for a twelve (12) month period, said period ending not more than ninety (90) days prior to the date the application is filed. The said exhibit shall disclose the following information in the order indicated below:~~

~~(1) Amount and kinds of stock authorized.~~

~~(2) Amount and kinds of stock issued and outstanding.~~

~~(3) Terms of preference of preferred stock whether cumulative or participating, or on dividends or assets or otherwise.~~

~~(4) Brief description of each mortgage on property of applicant, giving date of execution, name of mortgagor, name of mortgagee, or trustee, amount of indebtedness authorized to be secured thereby, and the amount of indebtedness actually secured, together with any sinking fund provisions.~~

~~(5) Amount of bonds authorized, and amount issued, giving the name of the public utility which issued the same, describing each class separately, and giving date of issue, face value, rate of interest, date of maturity and how secured, together with amount of interest paid thereon during the last fiscal year.~~

~~(6) Each note outstanding, giving date of issue, amount, date of maturity, rate of interest, in whose favor, together with amount of interest paid thereon during the last fiscal year.~~

~~(7) Other indebtedness, giving same by classes and describing security, if any, with a brief statement of the devolution or assumption of any portion of such indebtedness upon or by person or corporation if the original liability has been transferred, together with amount of interest paid thereon during the last fiscal year.~~

~~(8) Rate and amount of dividends paid during the five (5) previous fiscal years, and the amount of capital stock on which dividends were paid each year.~~

~~(9) Detailed income statement and balance sheet.~~

~~Section 7. Confidential Material. (1) All material on file with the commission shall be available for examination by the public unless the material is confidential as provided herein.~~

~~(2) Procedure for determining confidentiality.~~

~~(a) Any person requesting confidential treatment of any material shall file a petition which:~~

~~1. Sets forth specific grounds pursuant to KRS 61.870 et seq., the Kentucky Open Records Act, upon which the commission should classify that material as confidential; and~~

~~2. Attaches one (1) copy of the material which identifies by underscoring, highlighting with transparent ink, or other reasonable means only those portions which unless deleted would disclose confidential material. Text pages or portions thereof which do not contain confidential material shall not be included in this identification.~~

~~(b) The petition, one (1) copy of the material which is identified by underscoring or highlighting, and ten (10) copies of the material with those portions obscured for which confidentiality is sought, shall be filed with the commission.~~

~~(c) The petition and a copy of the material, with only those portions for which confidentiality is sought obscured, shall be served on all parties. The petition shall contain a certificate of service on all parties.~~

~~(d) The burden of proof to show that the material falls within the exclusions from disclosure requirements enumerated in KRS 61.870 et seq., shall be upon the person requesting confidential treatment.~~

~~(e) Any person may respond to the petition for confidential treatment within ten (10) days after it is filed with the commission.~~

~~(3) Pending commission action on the petition, the material specifically identified shall be temporarily accorded confidential treatment.~~

~~(4) If the commission denies the petition for confidential treatment of material, the material shall not be placed in the public record for twenty (20) days to allow the petitioner to seek any remedy afforded by law.~~

~~(5) Procedure for any party to request access to confidential material filed in any proceeding.~~

~~(a) No party to any proceeding before the commission shall fail to respond to discovery by the commission or its staff or any other party to the proceeding on grounds of confidentiality. If any party responding to discovery requests seeks to have a portion or all of the response held confidential by the commission, it shall follow the procedures for petitioning for confidentiality contained in this administrative regulation. Any party's response to discovery requests shall be served upon all parties, with only those portions for which confidential treatment is sought obscured.~~

~~(b) If the commission grants confidential protection to the responsive material and if parties have not entered into protective agreements, then any party may petition the commission requesting access to the material on the grounds that it is essential to a meaningful participation in the proceeding. The petition shall include a description of efforts to enter into a protective agreement and any unwillingness to enter into a protective agreement shall be fully explained. Any party may respond to the petition within ten (10) days after it is filed with the commission. The commission shall determine if the petitioner is entitled to the material, and the manner and extent of the disclosure necessary to protect confidentiality.~~

~~(6) Requests for access to records pursuant to KRS 61.870-884. No time period prescribed in this section shall limit the right of any person to request access to commission records pursuant to KRS 61.870-884. Upon a request filed pursuant to KRS 61.870-884, the commission shall respond in accordance with the procedure prescribed in KRS 61.880.~~

~~(7) Procedure for request for access to confidential material. Any person denied access to records requested pursuant to KRS 61.870-884 or to material deemed confidential by the commission in accordance with the procedures set out in this section, may obtain this information only pursuant to KRS 61.870-884, and other applicable law.~~

~~(8) Use of confidential material during formal proceedings. Any material deemed confidential by the commission may be addressed and relied upon during a formal hearing by the following procedure:~~

~~(a) The person seeking to address the confidential material shall advise the commission prior to the use of such material.~~

~~(b) All persons other than commission employees not a party to a protective agreement related to the confidential material shall be excused from the hearing room during direct testimony and cross-examination directly related to confidential material.~~

~~(c) The court reporter shall produce a sealed transcript of that~~

~~portion of the record directly related to the confidential material.~~

~~(9) Material granted confidentiality which later becomes publicly available or otherwise no longer warrants confidential treatment.~~

~~(a) The petitioner who sought confidential protection shall inform the commission in writing at any time when any material granted confidentiality becomes publicly available.~~

~~(b) If the commission becomes aware that material granted confidentiality is publicly available or otherwise no longer qualifies for confidential treatment, it shall by order so advise the petitioner who sought confidential protection, giving ten (10) days to respond. If the commission finds that material has been disclosed by someone other than the person who requested confidential treatment, in violation of a protective agreement or commission order, such information shall not be deemed or considered to be publicly available and shall not be placed in the public record.~~

~~(c) The material shall not be placed in the public record for twenty (20) days following any order finding that the material no longer qualifies for confidential treatment to allow the petitioner to seek any remedy afforded by law.~~

~~Section 8. Applications. (1) Contents of application. All applications must be by petition in writing. The petition must set forth the full name and post office address of the applicant, and must contain fully the facts on which the application is based, with a request for the order, authorization, permission or certificate desired and a reference to the particular provision of law requiring or providing for same.~~

~~(2) Number of copies. At the time the original application is filed, ten (10) additional copies must also be filed, and where parties interested in the subject matter of the application are named therein, there shall be filed an additional copy for each named party and such other additional copies as may be required by the secretary.~~

~~(3) Articles of incorporation. If the applicant is a corporation, a certified copy of its articles of incorporation, and all amendments thereto, if any, shall be annexed to the application. If applicant's articles of incorporation and amendments thereto, if any, have already been filed with the commission in some prior proceeding, it will be sufficient if this fact is stated in the application and reference is made to the style and case number of the prior proceeding.~~

~~Section 9. Applications for Certificates of Public Convenience and Necessity. (1) Application to bid on a franchise pursuant to KRS 278.020(3). Upon application to the commission by the utility for a certificate of convenience and necessity authorizing applicant to bid on a franchise, license or permit offered by any governmental agency, the applicant shall submit with its application, the following:~~

~~(a) A copy of its articles of incorporation (see Section 8(3) of this administrative regulation).~~

~~(b) The name of the governmental agency offering the franchise.~~

~~(c) The type of franchise offered.~~

~~(d) A statement showing the need and demand for service. Should the applicant be successful in acquiring said franchise, license or permit, it shall file a copy thereof with the commission.~~

~~(2) New construction or extension. When application is made by the utility, person, firm, or corporation for a certificate that the present or future public convenience or necessity requires, or will require, the construction or extension of any plant, equipment, property or facility, the applicant, in addition to complying with Section 8 of this administrative regulation, shall submit the following data, either in the application or as exhibits attached thereto:~~

~~(a) The facts relied upon to show that the proposed new construction is or will be required by public convenience or necessity.~~

~~(b) Copies of franchises or permits, if any, from the proper public authority for the proposed new construction or extension, if not previously filed with the commission.~~

~~(c) A full description of the proposed location, route, or routes of the new construction or extension, including a description of the manner in which same will be constructed, and also the names of all public utilities, corporations, or persons with whom the proposed new construction or extension is likely to compete.~~

~~(d) Three (3) maps to suitable scale (preferably not more than two (2) miles per inch) showing the location or route of the proposed new construction or extension, as well as the location to scale of any like facilities owned by others located anywhere within the map area with adequate identification as to the ownership of such other facilities.~~

~~(e) The manner in detail in which it is proposed to finance the new construction or extension.~~

~~(f) An estimated cost of operation after the proposed facilities are completed.~~

~~(g) All other information necessary to afford the commission a complete understanding of the situation.~~

~~(3) Extensions in the ordinary course of business. No certificate of public convenience and necessity will be required for extensions that do not create wasteful duplication of plant, equipment, property or facilities, or conflict with the existing certificates or service of other utilities operating in the same area and under the jurisdiction of the commission that are in the general area in which the utility renders service or contiguous thereto, and that do not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved, or will not result in increased charges to its customers.~~

~~(4) Renewal applications. Insofar as procedure is concerned, applications for a renewal of a certificate of convenience and necessity will be treated as an original application.~~

~~Section 10. Applications for General Adjustments in Existing Rates. (1) All applications requesting a general adjustment in existing rates shall be supported by:~~

~~(a) A twelve (12) month historical test period which may include adjustments for known and measurable changes; or~~

~~(b) A fully forecasted test period and shall include:~~

~~1. A statement of the reason the adjustment is required;~~

~~2. A statement that the utility's annual reports, including the annual report for the most recent calendar year, are on file with the commission in accordance with 807 KAR 5:006, Section 3(1);~~

~~3. If the utility is incorporated, a certified copy of the utility's articles of incorporation and all amendments thereto or out-of-state documents of similar import. If the utility's articles of incorporation and amendments have already been filed with the commission in a prior proceeding, the application may state this fact making reference to the style and case number of the prior proceeding;~~

~~4. If the utility is a limited partnership, a certified copy of the limited partnership agreement and all amendments thereto or out-of-state documents of similar import. If the utility's limited partnership agreement and amendments have already been filed with the commission in a prior proceeding, the application may state this fact making reference to the style and case number of the prior proceeding;~~

~~5. If the utility is incorporated or is a limited partnership, a certificate of good standing or certificate of authorization dated within sixty (60) days of the date the application is filed;~~

~~6. A certified copy of a certificate of assumed name as required by KRS 365.015 or a statement that such a certificate is not necessary;~~

~~7. The proposed tariff in a form which complies with 807 KAR 5:011 with an effective date not less than thirty (30) days from the date the application is filed;~~

~~8. The utility's proposed tariff changes, identified in compliance with 807 KAR 5:011, shown either by:~~

~~a. Providing the present and proposed tariffs in comparative form on the same sheet side by side or on facing sheets side by side; or~~

~~b. Providing a copy of the present tariff indicating proposed additions by italicized inserts or underscoring and striking over proposed deletions; and~~

~~9. A statement that customer notice has been given in compliance with subsections (3) and (4) of this section with a copy of the notice.~~

~~10. For the purposes of this administrative regulation, an affiliate is an entity that:~~

~~a. Is wholly owned by a utility; or~~

~~b. In which a utility has a controlling interest; or~~

~~c. That wholly owns a utility; or~~

~~d. That has a controlling interest in a utility; or~~

~~e. That is under common control with the utility.~~

~~11. For the purposes of this administrative regulation, a utility, or other entity, shall be deemed to have a controlling interest in, or be under common control with, an entity or utility if it:~~

~~a. Directly or indirectly has the power to direct, or to cause the direction of, the management or policies of any entity; and~~

~~b. Exercises such power:~~

~~(i) Through one (1) or more intermediary companies, or alone; or~~

~~(ii) In conjunction with, or pursuant to an agreement; or~~

~~(iii) Through ownership of ten (10) percent or more of the voting securities; or~~

~~(iv) Through common directors, officers, stockholders, voting or holding trusts, associated companies; or~~

~~(v) Contract; or~~

~~(vi) Any other direct or indirect means.~~

~~(2) Notice of intent. Utilities with gross annual revenues greater than $1,000,000 shall file with the commission a written notice of intent to file a rate application at least four (4) weeks prior to filing their application. The notice of intent shall state whether the rate application will be supported by a historical test period or a fully forecasted test period. This notice shall be served upon the Attorney General, Utility Intervention and Rate Division.~~

~~(3) Form of notice to customers. Every utility filing an application pursuant to this section shall notify all affected customers in the manner prescribed herein. The notice shall include the following information:~~

~~(a) The amount of the change requested in both dollar amounts and percentage change for each customer classification to which the proposed rate change will apply;~~

~~(b) The present rates and the proposed rates for each customer class to which the proposed rates would apply;~~

~~(c) Electric, gas, water and sewer utilities shall include the effect upon the average bill for each customer class to which the proposed rate change will apply;~~

~~(d) Local exchange companies shall include the effect upon the average bill for each customer class for the proposed rate change in basic local service;~~

~~(e) A statement that the rates contained in this notice are the rates proposed by (name of utility); however, the Public Service Commission may order rates to be charged that differ from the proposed rates contained in this notice;~~

~~(f) A statement that any corporation, association, or person with a substantial interest in the matter may, by written request, within thirty (30) days after publication or mailing of this notice of the proposed rate changes request to intervene; intervention may be granted beyond the thirty (30) day period for good cause shown;~~

~~(g) A statement that any person who has been granted intervention by the commission may obtain copies of the rate application and any other filings made by the utility by contacting the utility through a name and address and phone number stated in this notice;~~

~~(h) A statement that any person may examine the rate application and any other filings made by the utility at the main office of the utility or at the commission's office indicating the addresses and telephone numbers of both the utility and the commission; and~~

~~(i) The commission may grant a utility with annual gross revenues greater than $1,000,000, upon written request, permission to use an abbreviated form of published notice of the proposed rates provided the notice includes a coupon which may be used to obtain all of the information required herein.~~

~~(4) Manner of notification.~~

~~(a) Sewer utilities shall give the required typewritten notice by mail to all of their customers pursuant to KRS 278.185.~~

~~(b) Applicants with twenty (20) or fewer customers affected by the proposed general rate adjustment shall mail the required typewritten notice to each customer no later than the date the application is filed with the commission.~~

~~(c) Except for sewer utilities, applicants with more than twenty (20) customers affected by the proposed general rate adjustment shall give the required notice by one (1) of the following methods:~~

~~1. A typewritten notice mailed to all customers no later than the date the application is filed with the commission;~~

~~2. Publishing the notice in a trade publication or newsletter which is mailed to all customers no later than the date on which the application is filed with the commission; or~~

~~3. Publishing the notice once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in the utility's service area, the first publication to be made within seven (7) days of the filing of the application with the commission.~~

~~(d) If the notice is published, an affidavit from the publisher verifying the notice was published, including the dates of the publication with an attached copy of the published notice, shall be filed with the commission no later than forty-five (45) days of the filed date of the application.~~

~~(e) If the notice is mailed, a written statement signed by the utility's chief officer in charge of Kentucky operations verifying the notice was mailed shall be filed with the commission no later than thirty (30) days of the filed date of the application.~~

~~(f) All utilities, in addition to the above notification, shall post a sample copy of the required notification at their place of business no later than the date on which the application is filed which shall remain posted until the commission has finally determined the utility's rates.~~

~~(g) Compliance with this subsection shall constitute compliance with 807 KAR 5:051, Section 2.~~

~~(5) Notice of hearing scheduled by the commission upon application by a utility for a general adjustment in rates shall be advertised by the utility by newspaper publication in the areas that will be affected in compliance with KRS 424.300.~~

~~(6) All applications supported by a historical test period shall include the following information or a statement explaining why the required information does not exist and is not applicable to the utility's application:~~

~~(a) A complete description and quantified explanation for all proposed adjustments with proper support for any proposed changes in price or activity levels, and any other factors which may affect the adjustment;~~

~~(b) If the utility has gross annual revenues greater than $1,000,000, the prepared testimony of each witness the utility proposes to use to support its application;~~

~~(c) If the utility has gross annual revenues less than $1,000,000, the prepared testimony of each witness the utility proposes to use to support its application or a statement that the utility does not plan to submit any prepared testimony;~~

~~(d) A statement estimating the effect that the new rate(s) will have upon the revenues of the utility including, at minimum, the total amount of revenues resulting from the increase or decrease and the percentage of the increase or decrease;~~

~~(e) If the utility provides electric, gas, water or sewer service the effect upon the average bill for each customer classification to which the proposed rate change will apply;~~

~~(f) If the utility is a local exchange company the effect upon the average bill for each customer class for the proposed rate change in basic local service;~~

~~(g) An analysis of customers' bills in such detail that revenues from the present and proposed rates can be readily determined for each customer class;~~

~~(h) A summary of the utility's determination of its revenue requirements based on return on net investment rate base, return on capitalization, interest coverage, debt service coverage, or operating ratio, with supporting schedules;~~

~~(i) A reconciliation of the rate base and capital used to determine its revenue requirements;~~

~~(j) A current chart of accounts if more detailed than the Uniform System of Accounts prescribed by the commission;~~

~~(k) The independent auditor's annual opinion report, with any written communication from the independent auditor to the utility which indicates the existence of a material weakness in the utility's internal controls;~~

~~(l) The most recent Federal Energy Regulatory Commission or Federal Communication Commission audit reports;~~

~~(m) The most recent Federal Energy Regulatory Commission Form 1 (electric), Federal Energy Regulatory Commission Form 2 (gas), or Automated Reporting Management Information System Report (telephone) and Public Service Commission Form T (telephone);~~

~~(n) A summary of the utility's latest depreciation study with schedules by major plant accounts, except that telecommunications utilities that have adopted the commission's average depreciation rates shall provide a schedule that identifies the current and test period depreciation rates used by major plant accounts. If the required information has been filed in another commission case a reference to that case's number and style will be sufficient;~~

~~(o) A list of all commercially available or in-house developed computer software, programs, and models used in the development of the schedules and work papers associated with the filing of the utility's application. This list shall include each software, program, or model; what the software, program, or model was used for; identify the supplier of each software, program, or model; a brief description of the software, program, or model; the specifications for the computer hardware and the operating system required to run the program;~~

~~(p) Prospectuses of the most recent stock or bond offerings;~~

~~(q) Annual report to shareholders, or members, and statistical supplements covering the two (2) most recent years from the utility's application filing date;~~

~~(r) The monthly managerial reports providing financial results of operations for the twelve (12) months in the test period;~~

~~(s) Securities and Exchange Commission's annual report for the most recent two (2) years, Form 10-Ks and any Form 8-Ks issued within the past two (2) years, and Form 10-Qs issued during the past six (6) quarters updated as current information becomes available;~~

~~(t) If the utility had any amounts charged or allocated to it by an affiliate or general or home office or paid any monies to an affiliate or general or home office during the test period or during the previous three (3) calendar years, the utility shall file:~~

~~1. A detailed description of the method and amounts allocated or charged to the utility by the affiliate or general or home office for each charge allocation or payment;~~

~~2. An explanation of how the allocator for the test period was determined; and~~

~~3. All facts relied upon, including other regulatory approval, to demonstrate that each amount charged, allocated or paid during the test period was reasonable;~~

~~(u) If the utility provides gas, electric or water utility service and has annual gross revenues greater than $5,000,000, a cost of service study based on a methodology generally accepted within the industry and based on current and reliable data from a single time period; and~~

~~(v) Local exchange carriers with fewer than 50,000 access lines shall not be required to file cost of service studies, except as specifically directed by the commission. Local exchange carriers with more than 50,000 access lines shall file:~~

~~1. A jurisdictional separations study consistent with Part 36 of the Federal Communications Commission's rules and regulations; and~~

~~2. Service specific cost studies to support the pricing of all services that generate annual revenue greater than $1,000,000, except local exchange access:~~

~~a. Based on current and reliable data from a single time period; and~~

~~b. Using generally recognized fully allocated, embedded, or incremental cost principles.~~

~~(7) Upon good cause shown, a utility may request pro forma adjustments for known and measurable changes to ensure fair, just and reasonable rates based on the historical test period. The following information shall be filed with applications requesting pro forma adjustments or a statement explaining why the required information does not exist and is not applicable to the utility's application:~~

~~(a) A detailed income statement and balance sheet reflecting the impact of all proposed adjustments;~~

~~(b) The most recent capital construction budget containing at least the period of time as proposed for any pro forma adjustment for plant additions;~~

~~(c) For each proposed pro forma adjustment reflecting plant additions provide the following information:~~

~~1. The starting date of the construction of each major component of plant;~~

~~2. The proposed in-service date;~~

~~3. The total estimated cost of construction at completion;~~

~~4. The amount contained in construction work in progress at the end of the test period;~~

~~5. A schedule containing a complete description of actual plant retirements and anticipated plant retirements related to the pro forma plant additions including the actual or anticipated date of retirement;~~

~~6. The original cost, cost of removal and salvage for each component of plant to be retired during the period of the proposed pro forma adjustment for plant additions;~~

~~7. An explanation of any differences in the amounts contained in the capital construction budget and the amounts of capital construction cost contained in the pro forma adjustment period; and~~

~~8. The impact on depreciation expense of all proposed pro forma adjustments for plant additions and retirements;~~

~~(d) The operating budget for each month of the period encompassing the pro forma adjustments;~~

~~(e) The number of customers to be added to the test period - end level of customers and the related revenue requirements impact for all pro forma adjustments with complete details and supporting work papers.~~

~~(8) All applications requesting a general adjustment in rates supported by a fully forecasted test period shall comply with the following requirements:~~

~~(a) The financial data for the forecasted period shall be presented in the form of pro forma adjustments to the base period.~~

~~(b) Forecasted adjustments shall be limited to the twelve (12) months immediately following the suspension period.~~

~~(c) Capitalization and net investment rate base shall be based on a thirteen (13) month average for the forecasted period.~~

~~(d) After an application based on a forecasted test period is filed, there shall be no revisions to the forecast, except for the correction of mathematical errors, unless such revisions reflect statutory or regulatory enactments that could not, with reasonable diligence, have been included in the forecast on the date it was filed. There shall be no revisions filed within thirty (30) days of a scheduled hearing on the rate application.~~

~~(e) The commission may require the utility to prepare an alternative forecast based on a reasonable number of changes in the variables, assumptions, and other factors used as the basis for the utility's forecast.~~

~~(f) The utility shall provide a reconciliation of the rate base and capital used to determine its revenue requirements.~~

~~(9) All applications requesting a general adjustment in rates supported by a fully forecasted test period shall include the following or a statement explaining why the required information does not exist and is not applicable to the utility's application:~~

~~(a) The prepared testimony of each witness the utility proposes to use to support its application which shall include testimony from the utility's chief officer in charge of Kentucky operations on the existing programs to achieve improvements in efficiency and productivity, including an explanation of the purpose of the program;~~

~~(b) The utility's most recent capital construction budget containing at minimum a three (3) year forecast of construction expenditures;~~

~~(c) A complete description, which may be filed in prefiled testimony form, of all factors used in preparing the utility's forecast period. All econometric models, variables, assumptions, escalation factors, contingency provisions, and changes in activity levels shall be quantified, explained, and properly supported;~~

~~(d) The utility's annual and monthly budget for the twelve (12) months preceding the filing date, the base period and forecasted period;~~

~~(e) A statement of attestation signed by the utility's chief officer in charge of Kentucky operations which shall provide:~~

~~1. That the forecast is reasonable, reliable, made in good faith and that all basic assumptions used in the forecast have been identified and justified; and~~

~~2. That the forecast contains the same assumptions and methodologies as used in the forecast prepared for use by management, or an identification and explanation for any differences that exist; and~~

~~3. That productivity and efficiency gains are included in the forecast;~~

~~(f) For each major construction project which constitutes five (5) percent or more of the annual construction budget within the three (3) year forecast the following information shall be filed:~~

~~1. The date the project was started or estimated starting date;~~

~~2. The estimated completion date;~~

~~3. The total estimated cost of construction by year exclusive and inclusive of allowance for funds used during construction ("AFUDC") or interest during construction credit; and~~

~~4. The most recent available total costs incurred exclusive and inclusive of AFUDC or interest during construction credit;~~

~~(g) For all construction projects which constitute less than five (5) percent of the annual construction budget within the three (3) year forecast, the utility shall file an aggregate of the information requested in paragraph (f)3 and 4 of this subsection;~~

~~(h) A financial forecast corresponding to each of the three (3) forecasted years included in the capital construction budget. The financial forecast shall be supported by the underlying assumptions made in projecting the results of operations and shall include the following information:~~

~~1. Operating income statement (exclusive of dividends per share or earnings per share);~~

~~2. Balance sheet;~~

~~3. Statement of cash flows;~~

~~4. Revenue requirements necessary to support the forecasted rate of return;~~

~~5. Load forecast including energy and demand (electric);~~

~~6. Access line forecast (telephone);~~

~~7. Mix of generation (electric);~~

~~8. Mix of gas supply (gas);~~

~~9. Employee level;~~

~~10. Labor cost changes;~~

~~11. Capital structure requirements;~~

~~12. Rate base;~~

~~13. Gallons of water projected to be sold (water);~~

~~14. Customer forecast (gas, water);~~

~~15. MCF sales forecasts (gas);~~

~~16. Toll and access forecast of number of calls and number of minutes (telephone); and~~

~~17. A detailed explanation of any other information provided;~~

~~(i) The most recent Federal Energy Regulatory Commission or Federal Communications Commission audit reports;~~

~~(j) The prospectuses of the most recent stock or bond offerings;~~

~~(k) The most recent Federal Energy Regulatory Commission Form 1 (electric), Federal Energy Regulatory Commission Form 2 (gas), or the Automated Reporting Management Information System Report (telephone) and Public Service Commission Form T (telephone);~~

~~(l) The annual report to shareholders or members and the statistical supplements covering the most recent five (5) years from the application filing date;~~

~~(m) The current chart of accounts if more detailed than the Uniform System of Accounts chart prescribed by the commission;~~

~~(n) The latest twelve (12) months of the monthly managerial reports providing financial results of operations in comparison to the forecast;~~

~~(o) Complete monthly budget variance reports, with narrative explanations, for the twelve (12) months immediately prior to the base period, each month of the base period, and any subsequent months, as they become available;~~

~~(p) The Securities and Exchange Commission's annual report for the most recent two (2) years, Form 10-Ks and any Form 8-Ks issued during the prior two (2) years and any Form 10-Qs issued during the past six (6) quarters;~~

~~(q) The independent auditor's annual opinion report, with any written communication from the independent auditor to the utility which indicates the existence of a material weakness in the utility's internal controls;~~

~~(r) The quarterly reports to the stockholders for the most recent five (5) quarters;~~

~~(s) The summary of the latest depreciation study with schedules itemized by major plant accounts, except that telecommunications utilities that have adopted the commission's average depreciation rates shall provide a schedule that identifies the current and base period depreciation rates used by major plant accounts. If the required information has been filed in another commission case a reference to that case's number and style will be sufficient;~~

~~(t) A list of all commercially available or in-house developed computer software, programs, and models used in the development of the schedules and work papers associated with the filing of the utility's application. This list shall include each software, program, or model; what the software, program, or model was used for; identify the supplier of each software, program, or model; a brief description of the software, program, or model; the specifications for the computer hardware and the operating system required to run the program;~~

~~(u) If the utility had any amounts charged or allocated to it by an affiliate or a general or home office or paid any monies to an affiliate or a general or home office during the base period or during the previous three (3) calendar years, the utility shall file:~~

~~1. A detailed description of the method and amounts allocated or charged to the utility by the affiliate or general or home office for each allocation or payment;~~

~~2. The method and amounts allocated during the base period and the method and estimated amounts to be allocated during the forecasted test period;~~

~~3. An explanation of how the allocator for both the base period and the forecasted test period were determined; and~~

~~4. All facts relied upon, including other regulatory approval, to demonstrate that each amount charged, allocated or paid during the base period is reasonable;~~

~~(v) If the utility provides gas, electric or water utility service and has annual gross revenues greater than $5,000,000, a cost of service study based on a methodology generally accepted within the industry and based on current and reliable data from a single time period; and~~

~~(w) Local exchange carriers with fewer than 50,000 access lines shall not be required to file cost of service studies, except as specifically directed by the commission. Local exchange carriers with more than 50,000 access lines shall file:~~

~~1. A jurisdictional separations study consistent with Part 36 of the Federal Communications Commission's rules and regulations; and~~

~~2. Service specific cost studies to support the pricing of all services that generate annual revenue greater than $1,000,000 except local exchange access:~~

~~a. Based on current and reliable data from a single time period; and~~

~~b. Using generally recognized fully allocated, embedded, or incremental cost principles.~~

~~(10) All applications seeking a general adjustment in rates supported by a forecasted test period shall include the following data to be submitted using schedule forms hereby incorporated by reference and which may be inspected, copied or obtained at the commission's offices at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday between the hours of 8 a.m. and 4:30 p.m., local time. The commission shall notify the utility of any deficiencies in the application within thirty (30) days of receiving it. The utility may cure such filing deficiencies within thirty (30) days' written notice from the commission.~~

~~(a) A jurisdictional financial summary for both the base period and the forecasted period which details how the utility derived the amount of the requested revenue increase;~~

~~(b) A jurisdictional rate base summary for both the base period and the forecasted period with supporting schedules which include detailed analyses of each component of the rate base;~~

~~(c) A jurisdictional operating income summary for both the base period and the forecasted period with supporting schedules which provide breakdowns by major account group and by individual account;~~

~~(d) A summary of jurisdictional adjustments to operating income by major account with supporting schedules for individual adjustments and jurisdictional factors;~~

~~(e) A jurisdictional federal and state income tax summary for both the base period and the forecasted period with all supporting schedules of the various components of jurisdictional income tax-~~

~~es;~~

~~(f) Summary schedules for both the base period and the forecasted period (the utility may also provide a summary segregating those items it proposes to recover in rates) of organization membership dues; initiation fees; expenditures at country clubs; charitable contributions; marketing, sales, and advertising expenditures; professional service expenses; civic and political activity expenses; expenditures for employee parties and outings; employee gift expenses; and rate case expenses;~~

~~(g) Analyses of payroll costs including schedules for wages and salaries, employee benefits, payroll taxes, straight time and overtime hours, and executive compensation by title;~~

~~(h) A computation of the gross revenue conversion factor for the forecasted period;~~

~~(i) Comparative income statements (exclusive of dividends per share or earnings per share), revenue statistics and sales statistics for the five (5) most recent calendar years from the application filing date, the base period, the forecasted period, and two (2) calendar years beyond the forecast period;~~

~~(j) A cost of capital summary for both the base period and forecasted period with supporting schedules providing details on each component of the capital structure;~~

~~(k) Comparative financial data and earnings measures for the ten (10) most recent calendar years, the base period, and the forecast period;~~

~~(l) A narrative description and explanation of all proposed tariff changes;~~

~~(m) A revenue summary for both the base period and forecasted period with supporting schedules which provide detailed billing analyses for all customer classes; and~~

~~(n) A typical bill comparison under present and proposed rates for all customer classes.~~

~~(11) A request for waiver of any of the provisions of these filing requirements must set forth the specific reasons for the request. The commission shall grant the request for waiver upon good cause shown by the utility. In determining whether good cause has been shown, the commission may consider:~~

~~(a) Whether other information which the utility would provide if the waiver is granted is sufficient to allow the commission to effectively and efficiently review the rate application;~~

~~(b) Whether the information which is the subject of the waiver request is normally maintained by the utility or reasonably available to it from the information which it maintains; and~~

~~(c) The expense to the utility in providing the information which is the subject of the waiver request.~~

~~Section 11. Application for Authority to Issue Securities, Notes, Bonds, Stocks or Other Evidences of Indebtedness. (1) When application is made by the utility for an order authorizing the issuance of securities, notes, bonds, stocks or other evidences of indebtedness payable at periods of more than two (2) years from the date thereof, under the provisions of KRS 278.300, said application, in addition to complying with the requirements of Section 8 of this administrative regulation, shall contain:~~

~~(a) A general description of applicant's property and the field of its operation, together with a statement of the original cost of the same and the cost to the applicant, if it is impossible to state the original cost, the facts creating such impossibility shall be stated.~~

~~(b) The amount and kinds of stock, if any, which the utility desires to issue, and, if preferred, the nature and extent of the preference; the amount of notes, bonds or other evidences of indebtedness, if any, which the utility desires to issue, with terms, rate of interest and whether and how to be secured.~~

~~(c) The use to be made of the proceeds of the issue of such securities, notes, bonds, stocks or other evidence of indebtedness with a statement indicating how much is to be used for the acquisition of property, the construction, completion, extension or improvement of facilities, the improvement of service, the maintenance of service and the discharge or refunding of obligations.~~

~~(d) The property in detail which is to be acquired, constructed, improved or extended with its cost, a detailed description of the contemplated construction, completion, extension or improvement of facilities set forth in such a manner that an estimate of cost may be made, a statement of the character of the improvement of service proposed, and of the reasons why the service should be maintained from its capital. Whether any contracts have been made for the acquisition of such property, or for such construction, completion, extension or improvement of facilities, or for the disposition of any of the securities, notes, bonds, stocks or other evidence of indebtedness which it proposes to issue or the proceeds thereof and if any contracts have been made, copies thereof shall be annexed to the petition.~~

~~(e) If it is proposed to discharge or refund obligations, a statement of the nature and description of such obligations including their par value, the amount for which they were actually sold, the expenses associated therewith, and the application of the proceeds from such sales. If notes are to be refunded, the petition must show the date, amount, time, rate of interest, and payee of each and the purpose for which their proceeds were expended.~~

~~(f) Such other facts as may be pertinent to the application.~~

~~(2) The following exhibits must be filed with the application:~~

~~(a) Financial exhibit (see Section 6 of this administrative regulation).~~

~~(b) Copies of trust deeds or mortgages, if any, unless they have already been filed with the commission, in which case reference should be made, by style and case number, to the proceeding in which the trust deeds or mortgages have been filed.~~

~~(c) Maps and plans of the proposed property and constructions together with detailed estimates in such form that they can be checked over by the commission's engineering division. Estimates must be arranged according to the uniform system of accounts prescribed by the commission for the various classes of utilities.~~

~~Section 12. Formal Complaints. (1) Contents of complaint. Each complaint shall be headed "Before the Public Service Commission," shall set out the names of the complainant and the name of the defendant, and shall state:~~

~~(a) The full name and post office address of the complainant.~~

~~(b) The full name and post office address of the defendant.~~

~~(c) Fully, clearly, and with reasonable certainty, the act or thing done or omitted to be done, of which complaint is made, with a reference, where practicable, to the law, order, or section, and subsections, of which a violation is claimed, and such other matters, or facts, if any, as may be necessary to acquaint the commission fully with the details of the alleged violation. The complainant shall set forth definitely the exact relief which is desired (see Section 15(1) of this administrative regulation).~~

~~(2) Signature. The complaint shall be signed by the complainant or his attorney, if any, and if signed by such attorney, shall show his post office address. Complaints by corporations or associations, or any other organization having the right to file a complaint, must be signed by its attorney and show his post office address. No oral or unsigned complaints will be entertained or acted upon by the commission.~~

~~(3) Number of copies required. At the time the complainant files his original complaint, he must also file copies thereof equal in number to ten (10) more than the number of persons or corporations to be served.~~

~~(4) Procedure on filing of complaint.~~

~~(a) Upon the filing of such complaint, the commission will immediately examine the same to ascertain whether it establishes a prima facie case and conforms to this administrative regulation. If the commission is of the opinion that the complaint does not establish a prima facie case or does not conform to this administrative regulation, it will notify the complainant or his attorney to that effect, and opportunity may be given to amend the complaint within a specified time. If the complaint is not so amended within such time or such extension thereof as the commission, for good cause shown, may grant, it will be dismissed.~~

~~(b) If the commission is of the opinion that such complaint, either as originally filed or as amended, does establish a prima facie case and conforms to this administrative regulation, the commission will serve an order upon such corporations or persons complained of under the hand of its secretary and attested by its seal, accompanied by a copy of said complaint, directed to such corporation or person and requiring that the matter complained of be satisfied, or that the complaint be answered in writing within ten (10) days from the date of service of such order, provided that the~~

~~commission may, in particular cases, require the answer to be filed within a shorter time.~~

~~(5) Satisfaction of the complaint. If the defendant desires to satisfy the complaint, he shall submit to the commission, within the time allowed for satisfaction or answer, a statement of the relief which he is willing to give. Upon the acceptance of this offer by the complainant and the approval of the commission, no further proceedings need be taken.~~

~~(6) Answer to complaint. If satisfaction be not made as aforesaid, the corporation or person complained of must file an answer to the complaint, with certificate of service on other parties endorsed thereon, within the time specified in the order or such extension thereof as the commission, for good cause shown, may grant. The answer must contain a specific denial of such material allegations of the complaint as controverted by the defendant and also a statement of any new matter constituting a defense. If the answering party has no information or belief upon the subject sufficient to enable him to answer an allegation of the complaint, he may so state in his answer and place his denial upon that ground (see Section 15(2) of this administrative regulation).~~

~~Section 13. Informal Complaints. (1) Informal complaints must be made in writing. Matters thus presented are, if their nature warrants, taken up by correspondence with the utility complained against in an endeavor to bring about satisfaction of the complaint without formal hearing.~~

~~(2) No form of informal complaint is prescribed, but in substance it must contain the essential elements of a complaint, including the name and address of complainant, the correct name and post office address of the utility against whom complaint is made, a clear and concise statement of the facts involved, and the relief requested.~~

~~(3) In the event of failure to bring about satisfaction of the complaint because of the inability of the parties to agree as to the facts involved, or from other causes, the proceeding is held to be without prejudice to the complainant's right to file and prosecute a formal complaint whereupon the informal proceedings will be discontinued.~~

~~Section 14. Deviations from Rules. In special cases, for good cause shown, the commission may permit deviations from these rules.~~

~~Section 15. Forms. (1) In all practice before the commission the following forms shall be followed insofar as practicable:~~

~~(a) Formal complaint.~~
~~(b) Answer.~~
~~(c) Application.~~
~~(d) Notice of adjustment of rates.~~
~~(2) Forms of formal complaint.~~
~~Before the Public Service Commission~~
~~(Insert name of complainant))~~
~~Complainant)~~
~~) No. _____~~
~~vs.) (To be inserted by the~~
~~) secretary)~~
~~(Insert name of each defendant))~~
~~Defendant)~~

~~COMPLAINT~~

~~The complaint of (here insert full name of each complainant) respectfully shows:~~

~~(a) That (here state name, occupation and post office address of each complainant).~~

~~(b) That (here insert full name, occupation and post office address of each defendant).~~

~~(c) That (here insert fully and clearly the specific act or thing complained of, such facts as are necessary to give a full understanding of the situation, and the law, order, or rule, and the section or sections thereof, of which a violation is claimed).~~

~~WHEREFORE, complainant asks (here state specifically the relief desired).~~

~~Dated at _____, Kentucky, this ____ day of _____, 19__~~

~~(Name of each complainant)~~
~~Name and address of attorney, if any)~~
~~(3) Form of answer to formal complaint.~~
~~Before the Public Service Commission~~
~~(Insert name of complainant))~~
~~COMPLAINANT)~~
~~) No. _____~~
~~vs.) (To be inserted by the~~
~~) secretary)~~
~~(Insert name of each defendant))~~
~~DEFENDANT)~~

~~ANSWER~~

~~The above-named defendant, for answer to the complaint in the proceeding, respectfully states:~~

~~That (here follow specific denials of such material, allegations as are controverted by the defendant and also a statement of any new matter constituting a defense. Continue lettering each succeeding paragraph).~~

~~WHEREFORE, the defendant prays that the complaint be dismissed (or other appropriate prayer).~~

~~(Name of defendant)~~
~~(Name and address of attorney, if any)~~
~~(4) Form of application.~~
~~Before the Public Service Commission~~
~~In the matter of the application of)~~
~~(here insert name of each)~~
~~applicant) for (here insert desired) No. _____~~
~~order, authorization, permission) (To be inserted by the~~
~~or certificate, thus: "Order) secretary)~~
~~authorizing issue of stocks)~~
~~and bonds))~~

~~APPLICATION~~

~~The petition of (here insert name of each applicant) respectfully shows:~~

~~(a) That applicant is engaged in the business of (here insert nature of business and territorial extent thereof).~~

~~(b) That the post office address of each applicant is _____.~~

~~(c) That (here state fully and clearly the facts required by these rules, and any additional facts which applicant desires to state).~~

~~WHEREFORE, applicant asks that the Public Service Commission of the Commonwealth of Kentucky make its order authorizing applicant to (here state specifically the action which the applicant desires the commission to take).~~

~~Dated at _____, Kentucky, this _____ day of _____,19___.~~

~~(Name of applicant)~~
~~(Name and address of attorney, if any)~~
~~(5) Form of notice to the commission of adjustment of rates.~~
~~Before the Public Service Commission~~
~~In the matter of adjustment) No._____~~
~~of rate of the (state name) (To be inserted by the~~
~~of corporation).) the secretary)~~

~~The (here insert name of company) informs the commission that it is engaged in the business of (set out character of business) in (set out place of operation) and does hereby propose to adjust its rates, effective the _____ day of _____, 19___, in conformity with the attached schedule.~~

~~(See Section 9 of this administrative regulation for required information.)~~
~~(Name and address of company)~~
~~(Name and address of attorney)]~~

DAVID L ARMSTRONG, Chairman

APPROVED BY AGENCY: July 12, 2012

FILED WITH LRC: July 13, 2012 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2012, at 9:00 a.m., Eastern Daylight Time, at the Public

Service Commission's office, 211 Sower Boulevard, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 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 attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2012. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Gerald E. Wuetcher, Executive Advisor/Attorney, Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, phone (502) 564-3940, fax (502) 564-7279.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gerald E. Wuetcher

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the rules of procedures for the hearings and formal proceedings before the Public Service Commission.

(b) The necessity of this administrative regulation: This administrative regulation is needed to provide the structural framework for hearings and formal proceedings that the Public Service Commission conducts.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 278.040(3) authorizes the Commission to adopt reasonable regulations to implement the provisions of KRS Chapter 278.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It sets forth the rules of procedure that utilities and the commission must follow.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendment sets forth rules for the electronic filing of cases, updates the procedures for confidentiality, and revises general operational practices of the Commission that have not been changed in 19 years.

(b) The necessity of the amendment to this administrative regulation: This regulation has not been amended in 19 years and currently makes no provision for the use of electronic filing procedures. This amendment will incorporate Public Service Commission practices developed since the regulations last amendment in 1993 and will also establish guidelines and procedures for a utility to electronically file cases with the Public Service Commission.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 278.040(3) authorizes the Commission to adopt reasonable regulations to implement the provisions of KRS Chapter 278.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides more choices and flexibility for utilities when submitting filings to the commission and utilities choosing to electronically file will benefit themselves and the Public Service Commission by reducing expenses for paper, printing, and postage as well as eliminating timing inefficiencies caused by postal delays.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The proposed amendment will affect all utilities regulated by the Public Service 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: This amendment will not require additional actions by the utilities, but rather provides more choices and flexibility when filing with the commission.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The proposed amendment generally reflects and incorporates informal practices and procedural devices that the Public Service Commission has developed and used in formal proceedings since the last revision to its rules of procedure. For a utility that electronically files a case before the commission, this amendment is expected to reduce litigation costs and expedite a final decision.

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

(a) Initially: Implementation of the proposed amendment will not involve additional costs.

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

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

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

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

(9) TIERING: Is tiering applied? No.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Public Service Commission; Office of Attorney General (Utility Rate and Intervention Division); water districts; sewer districts; municipalities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 278.040(3) authorizes the commission to adopt reasonable regulations to implement the provisions of KRS Chapter 278. KRS 278.310 provides that all hearings and investigations before the commission or any commissioner shall be governed by rules adopted by the commission.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No direct increase in revenue will result from the adoption of the proposed amendment for any governmental agency. The proposed amendment does not provide for the Public Service Commission to assess any fee or charge.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No direct increase in revenue will result from the adoption of the proposed amendment for any governmental agency. The proposed amendment does not provide for the Public Service Commission to assess any fee or charge.

(c) How much will it cost to administer this program for the first year? There should be no increase in the Public Service Commission's cost of operations related to the revision of the administrative regulation for the first year. The Public Service Commission will continue performing the same level of review and require the same number of employees to conduct its review.

(d) How much will it cost to administer this program for subsequent years? There should be no increase in the Public Service Commission's cost of operations related to the revision of the administrative regulation for subsequent years. The Public Service Commission will continue performing the same level of review and require the same number of employees to conduct its review.

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
Public Service Commission
(Amendment)

807 KAR 5:006. General Rules.

RELATES TO: KRS Chapter 278, 49 C.F.R. Part 192, 49 U.S.C. 60105
STATUTORY AUTHORITY: KRS 278.230, 278.280(2), 49 C.F.R. Part 192
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.230(3) provides that every utility shall file with the commission any reports, schedules or other information that the commission reasonably requires. KRS 278.280(2) provides that the commission[~~Public Service Commission (hereinafter referred to as "commission")~~] shall prescribe rules for the performance of any service or the furnishing of any commodity by any utility. This administrative regulation establishes general rules which apply to electric, gas, water, sewage and telephone utilities.[~~This administrative regulation includes the substance of 807 KAR 5:008, which it repeals.~~]

Section 1. Definitions. (1) "Built up community" means urban areas and those areas immediately adjacent.
(2) "Commission" is defined in KRS 278.010(15).
(3) "Corporation" is defined in KRS 278.010(1).
(4) "Customer" means any person, firm, corporation or body politic applying for or receiving service from any utility.
(5) "Gross Annual Operating Reports" means reports that KRS 278.140 requires each utility to file with the commission.
(6) "Nonrecurring charge" means a charge or fee assessed to customers to recover the specific cost of an activity, which:
(a) Is due to a specific request for a certain type of service activity for which, once the activity is completed, additional charges shall not be incurred; and
(b) Is limited to only recover the specific cost of the specific service.
(7) "Person" is defined in KRS 278.010(2).
(8) "Tariff" means a utility's schedule of all its rates, charges, tolls, maps, terms and conditions of service over which the commission has jurisdiction.
(9) "Utility" is defined in KRS 278.010(3).
(10) "Water Association" means any non-profit corporation, association or cooperative corporation having as its purpose the furnishing of a public water supply.
(11) "Water District" means a special district formed pursuant to KRS 65.810 and KRS Chapter 74.

Section 2. General Provisions. Any reference to standards or codes in 807 KAR Chapter 5 commission administrative regulations shall not prohibit a utility from continuing or initiating experimental work and installations to improve, decrease the cost of, or increase the safety of its service.

Section 3. Utility Contact Information. (1) A utility shall notify the commission in writing of:
(a) The address of its main corporate and Kentucky offices, including street address and post office box, city, state and zip code;
(b) The name, telephone number, facsimile number and mailing address of the person who serves as its primary liaison with the commission regarding its operations; and
(c) Its electronic mail address.
(2) The electronic mail address required in subsection (1) of this section shall be to an electronic mail account that the utility accesses at least once weekly and that is capable of receiving electronic mail from external sources and with attachments up to five (5) megabytes in size. Unless a utility otherwise advises the commission in writing, all electronic mail transmissions from the commission to the utility shall be sent to this address.
(3) A utility shall notify the commission in writing of any change in the information required in subsection (1) of this section within ten (10) days of the date of the change.

Section 4. Reports. (1) Gross Annual Operating Revenue Reports.
(a) Each utility shall file with the commission its gross operating revenue report on or before March 31 of each year.
(b) An extension request shall not be permitted for Gross Annual Operating Revenue Reports.
(c) A utility may file an amendment to its report with the commission on or before May 24 of the same year.
(d) The commission shall:
1. Not certify to the Department of Revenue the amounts of intrastate business set forth in any amendment filed with the commission after May 24 of that year; and
2. Report those amounts to the Department of Revenue for informational purposes.
(2) Financial and statistical reports.
(a) Every utility shall file annually using the commission's electronic filing system a financial and statistical report on or before March 31 of each year.
(b) This report shall be based upon utility type and the accounts established in conformity with the uniform system of accounts prescribed for that utility type.
(c) If documents are required to supplement or complete the report and cannot be submitted through the commission's electronic filing system, the utility shall file these documents in paper form with the commission no later than March 31.
(d) The commission shall make the reporting forms available on the commission's Web site at http://psc.ky.gov/.
(e) For good cause shown, the executive director of the commission may, upon application in writing, allow a reasonable extension of time for the filing.
(3) Financial statement audit reports. A utility required to file a report in accordance with section 4(2) of this regulation shall file with the commission on or before September 30 each year, a copy of the audit report of the Kentucky regulated entity, from the audit performed the previous year, or a statement that no audit was performed of the Kentucky regulated entity the previous year. For good cause shown, the executive director of the commission may, upon application in writing, allow a reasonable extension of time for the filing.
(4) Report of meters, customers and refunds. Each gas, electric, or water utility shall file quarterly either a Quarterly Meter Report-Electric, Quarterly Meter Report, or a Quarterly Meter Report-Electric-Gas-Water, of meter tests, number of customers, and amount of refunds.
(5) Report of terminations for nonpayment of bills. Each water, electric, or gas utility shall file either the Water Utility Non-Payment Disconnection/Reconnection Report, Electric Utility Non-Payment Disconnection/Reconnection Report, or Gas Utility Non-Payment Disconnection/Reconnection Report, annually to report the number of residential accounts terminated for nonpayment. These reports shall be filed no later than August 15 and shall cover the period ending June 30.
(6) Record and report retention. All records and reports shall be retained in accordance with the uniform system of accounts unless otherwise specified.
(7) Transmittal letter. Each report shall be accompanied by a transmittal letter describing the report being furnished.
(8) Amending reports. Upon discovering a material error in any report that it has filed with the commission, a utility shall file an amended report to correct the error.

Section 5. Service Information. (1) (a) A utility shall, on request, give its customers or prospective customers information that enables the customers to secure safe, efficient and continuous service.
(b) A utility shall inform its customers of any change made or proposed in the character of its service that might affect the efficiency, safety, or continuity of operation.

(2) Prior to making any substantial change in the character of the service furnished that would affect the efficiency, adjustment, speed or operation of the equipment or appliances of any customer, a utility shall apply for the commission's approval. The application shall show the nature of the change to be made, the number of customers affected, and the manner in which they will be affected.

(3) The utility shall inform each applicant for service of each type, class and character of service available at each location.

Section 6. Special Rules or Requirements. (1) A utility shall not establish any special rule or requirement without first obtaining the approval of the commission on proper application.

(2) Unless specifically authorized by this administrative regulation, no utility shall deny or refuse service to a customer who has complied with all conditions of service set forth in the utility's tariff on file with the commission

(3) (a) Obtaining easements and rights-of-way necessary to extend service shall be the responsibility of the utility.

(b) A utility shall not:

1. Require a prospective customer to obtain easements or rights-of-way on property not owned by the prospective customer as a condition for providing service; or

2. Refuse to provide service to any prospective or existing customer on the basis of that customer's refusal to grant an easement for facilities that do not serve the customer.

(c) The cost of obtaining easements or rights-of-way shall be included in the total per foot cost of an extension, and shall be apportioned among the utility and customer in accordance with 807 KAR 5:041, 807 KAR 5:061 or 807 KAR 5:066.

Section 7. Billings, Meter Readings and Information.

(1) Information on bills.

(a) Each bill for utility service issued periodically by a utility shall clearly show:

1. The date the bill was issued;

2. Class of service;

3. Present and last preceding meter readings;

4. Date of the present reading;

5. Number of units consumed;

6. Meter constant, if any;

7. Net amount for service rendered;

8. All taxes;

9. Any adjustments;

10. The gross amount of the bill;

11. The date after which a penalty may apply to the gross amount; and

12. Whether the bill is estimated or calculated.

(b) The rate schedule under which the bill is computed shall be posted on the utility's Web site, if it maintains a Web site, and shall also be furnished under one (1) of the following methods:

1. By printing it on the bill;

2. By publishing it in a newspaper of general circulation once each year;

3. By mailing it to each customer once each year; or

4. By providing a place on each bill for a customer to indicate the customer's desire for a copy of the applicable rates. The utility shall mail the customer a copy by return first class mail.

(2) Flat rates. Flat rates for unmetered service shall approximate as closely as possible the utility's rates for metered service. The rate schedule shall clearly set out the basis upon which consumption is estimated.

(3) Bill format. Each utility shall include the billing form, including any e-bill form, to be used by it, or its contents, in its tariffed rules.

(4) Meter readings. Registration of each meter shall read in the same units as used for billing unless a conversion factor is shown on the billing form.

(5) Frequency of meter reading.

(a) Except as provided in paragraph (b) or (c) of this subsection, each utility, except if prevented by reasons beyond its control, shall read customer meters at least quarterly;

(b) Each customer-read meter shall be read manually, at least once during each calendar year.

(c) Each customer meter using remote reading technology shall be inspected for proper working condition and readings verified at the intervals established in Section 26 of this administrative regulation.

(d) Records shall be kept by the utility to insure that the information required by this subsection is available to the commission and any customer requesting this information.

(e) If, due to reasons beyond its control, a utility is unable to read a meter in accordance with this subsection, the utility shall record the date and time the attempt was made, if applicable, and the reason the utility was unable to read the meter.

Section 8. Deposits. (1) Determination of deposits.

(a) A utility may require from any customer a minimum cash deposit or other guaranty to secure payment of bills, except from those customers qualifying for service reconnection under Section 16 of this administrative regulation.

(b) A utility shall not require a deposit based solely on the customer being a tenant or renter.

(c) The method of determining the amount of a cash deposit may differ between classes of customers, but shall be uniform for all customers within the same class.

(d) The amount of a cash deposit shall be determined by one (1) of the methods established in this paragraph.

1. Calculated deposits.

(a) If actual usage data is available for the customer at the same or similar premises, the deposit amount shall be calculated using the customer's average bill for the most recent twelve (12) month period.

(b) If actual usage data is not available, the deposit amount shall be based on the average bills of similar customers and premises in the system.

(c) Deposit amounts shall not exceed two-twelfths (2/12) of the customer's actual or estimated annual bill if bills are rendered monthly, three-twelfths (3/12) if bills are rendered bimonthly, or four-twelfths (4/12) if bills are rendered quarterly.

2. Equal deposits.

(a) A utility may establish an equal deposit amount for each class based on the average bill of customers in that class.

(b) Deposit amounts shall not exceed two-twelfths (2/12) of the average bill of customers in the class if bills are rendered monthly, three-twelfths (3/12) if bills are rendered bimonthly, or four-twelfths (4/12) if bills are rendered quarterly.

3. Recalculation of deposits.

a. If a utility retains either an equal or calculated deposit for more than eighteen (18) months, it shall notify customers in writing that, at the customer's request, the deposit shall be recalculated every eighteen (18) months based on actual usage of the customer.

b. The notice of deposit recalculation shall be included:

(i) On the customer's application for service;

(ii) On the receipt of deposit; or

(iii) Annually with or on customer bills.

c. The notice of deposit recalculation shall state that if the deposit on account differs by more than ten (10) dollars for residential customers, or by more than ten (10) percent for nonresidential customers, from the deposit calculated on actual usage, the utility shall refund any over-collection and may collect any underpayment.

d. Refunds shall be made either by check, electronic funds transfer, or by credit to the customer's bill, except that a utility shall not be required to refund any excess deposit if the customer's bill is delinquent when the deposit is recalculated.

(2) Waiver of deposits. Deposits may be waived at the discretion of a utility in accordance with criteria set forth in its tariff.

(3) Additional deposit requirement.

(a) If a deposit has been waived as allowed in subsection (2) of this section, or has been returned and the customer fails to maintain a satisfactory payment record as defined in the utility's tariff, a utility may require a deposit.

(b) If substantial change in the customer's usage has occurred, the utility may require an additional deposit.

(c) An additional or subsequent deposit shall not be required of residential customers whose payment record is satisfactory, unless the customer's classification of service changes, except as provid-

ed in subsection (1)(d)3 of this section.

(4) Receipt of deposit.

(a) A utility shall issue to every customer from whom a deposit is collected a receipt of deposit.

(b) The receipt shall show the name of the customer, location of the service or customer account number, date, and amount of deposit.

(c) If the notice of recalculation described in subsection (1)(d)3 of this section is not included in the utility's application for service or mailed with customer bills, the receipt of deposit shall contain the notification.

(d) If deposit amounts change, the utility shall issue a new receipt of deposit to the customer.

(5) Deposits as a condition of service. Except as provided by Section 16 of this administrative regulation, a utility may refuse or discontinue service to a customer pursuant to Section 15 of this administrative regulation if payment of requested deposits is not made.

(6) Interest on deposits.

(a) Interest shall accrue on all deposits at the rate prescribed by law, beginning on the date of deposit.

(b) Interest accrued shall be refunded to the customer or credited to the customer's bill on an annual basis.

(c) If interest is paid or credited to the customer's bill prior to twelve (12) months from the date of deposit, or the last interest payment date, the payment or credit shall be on a prorated basis.

(d) Upon termination of service, the deposit, any principal amounts, and interest earned and owing shall be credited to the final bill with any remainder refunded to the customer.

(7) Interest on deposits for water districts and associations.

(a) A water district or association that maintains a separate interest-bearing bank account designated as the customer deposit account shall pay interest to its customers on the deposits held at the rate in effect at each customer's anniversary date or at December 31 of the previous year for the customer deposit account.

(b) A water district or association that does not maintain a separate interest-bearing bank account designated as the customer deposit account shall pay interest to its customers on the deposits held at a rate that is the weighted average rate of all of its interest bearing accounts as of December 31 of the previous year.

(c) If the water district or association does not have any funds in an interest-bearing account, the water district or association shall pay interest to its customers on the deposits held at the rate in effect at each customer's anniversary date or at December 31 of the previous year for a basic savings account at the financial institution where the water district or association maintains its operation and maintenance account.

(8) Tariff requirements. A utility that chooses to require deposits shall establish and include in its filed tariff the deposit policy to be utilized. This policy shall include:

(a) The method by which deposit amounts will be determined for each customer class;

(b) Standard criteria for determining when a deposit will be required or waived;

(c) The deposit amount for each customer class if the method in subsection (1)(b) of this section is used;

(d) The period of time the utility will retain the deposit, or the conditions under which the utility will refund the deposit, or both if applicable; and

(e) The manner in which interest on deposits will be calculated and accrued and refunded or credited to customers' bills.

Section 9. Nonrecurring Charges. (1) A utility may make special nonrecurring charges to recover customer-specific costs incurred that would otherwise result in monetary loss to the utility or increased rates to other customers to whom no benefits accrue from the service provided or action taken. Any utility desiring to establish or change any special nonrecurring charge shall apply for commission approval of the charge in accordance with the provisions of 807 KAR 5:011, Section 10.

(2) Nonrecurring charges shall be included in a utility's tariff and applied uniformly throughout the area served by the utility. They shall relate directly to the service performed or action taken and shall yield only enough revenue to pay the expenses incurred in rendering the service.

(3) Nonrecurring charges shall include the charges listed in this subsection and may include other customer specific costs in accordance with this section and 807 KAR 5:011 section 10.

(a) Turn-on charge.

1. A turn-on charge may be assessed for a new service turn on, seasonal turn on or temporary service.

2. A turn-on charge shall not be made for initial installation of service if a tap fee is applicable.

(b) Reconnect charge.

1. A reconnect charge may be assessed to reconnect a service which has been terminated for nonpayment of bills or violation of the utility's rules or 807 KAR Chapter 5.

2. Customers qualifying for service reconnection under Section 16 of this administrative regulation shall be exempt from reconnect charges.

(c) Termination or field collection charge.

1. A charge may be assessed if a utility representative makes a trip to the premises of a customer for the purpose of terminating service.

2. The charge may be assessed if the utility representative actually terminates service or if, in the course of the trip, the utility representative agrees to delay termination based on the customer's payment or agreement to pay the delinquent bill by a specific date.

3. The utility shall not make a field collection charge more than once in any billing period.

(d) Special meter reading charge. This charge may be assessed if:

1. A customer requests that a meter be reread, and the second reading shows the original reading was correct. A charge shall not be assessed if the original reading was incorrect; or

2. A customer who reads his or her own meter fails to read the meter for three (3) consecutive months, and it is necessary for a utility representative to make a trip to read the meter.

(e) Meter resetting charge. A charge may be assessed for resetting a meter if the meter has been removed at the customer's request.

(f) Meter test charge. This charge may be assessed if a customer requests the meter be tested pursuant to Section 19 of this administrative regulation, and the tests show the as found meter accuracy is within the limits allowed by 807 KAR 5:022 Section 8(3)(a)(1) and 8(3)(b)(1); 807 KAR 5:041, Section 17(1); or 807 KAR 5:066, Section 15(2)(a).

(g) Returned payment charge. A returned payment charge may be assessed if any form of accepted payment of a utility bill is not honored by the customer's financial institution.

(h) Late payment charge. A late payment charge may be assessed if a customer fails to pay a bill for services by the due date shown on the customer's bill. The late payment charge may be assessed only once on any bill for rendered services. Any payment received shall first be applied to the bill for service rendered. Additional late payment charges shall not be assessed on unpaid late payment charges.

Section 10. Customer Complaints to the Utility. (1) Upon complaint to a utility by a customer at the utility's office, by telephone or in writing, the utility shall make a prompt and complete investigation and advise the customer of its findings.

(2) The utility shall keep a record of all written complaints concerning its service. This record shall include:

(a) The customer's name and address;

(b) The date and nature of the complaint; and

(c) The disposition of the complaint.

(3) Records shall be maintained for two (2) years from the date of resolution of the complaint.

(4) If a written complaint or a complaint made in person at the utility's office is not resolved, the utility shall provide written notice to the customer of his or her right to file a complaint with the commission, and shall provide the customer with the mailing address, Web site address and telephone number of the commission.

(5) If a telephonic complaint is not resolved, the utility shall provide at least oral notice to the customer of his or right to file a complaint with the commission and the mailing address, Web site

address and telephone number of the commission.

Section 11. Bill Adjustment for Gas, Electric or Water Utilities.

(1) If, upon periodic test, request test, or complaint test, a meter in service is found to be in error in excess of the limits allowed by 807 KAR 5:022, Section 8(3)(a)(2); 807 KAR 5:041, Section 17(1); or 807 KAR 5:066, Section 15(4), additional tests shall be made in accordance with those same administrative regulations applicable for the meter type involved to determine the average meter error.

(2) (a) If test results on a customer's meter show an average meter error greater than two (2) percent fast or slow, or if a customer has been incorrectly billed for any other reason, except if a utility has filed a verified complaint with the appropriate law enforcement agency alleging fraud or theft by a customer, the utility shall:

1. Immediately determine the period during which the error has existed;

2. Recompute and adjust the customer's bill to either provide a refund to the customer or collect an additional amount of revenue from the underbilled customer; and

3. Readjust the account based upon the period during which the error is known to have existed.

(b) 1. If the period during which the error existed cannot be determined with reasonable precision, the time period shall be estimated using the data as elapsed time since the last meter test, if applicable, and historical usage data for the customer.

2. If that data is not available, the average usage of a similar class of customers shall be used for comparison purposes in calculating the time period.

(c) If the customer and the utility are unable to agree on an estimate of the time period during which the error existed, the commission shall determine the issue.

(d) In all instances of customer overbilling, the customer's account shall be credited or the overbilled amount refunded at the discretion of the customer within thirty (30) days after the investigation is complete.

(e) A utility shall not require customer repayment of any underbilling to be made over a period shorter than a period coextensive with the underbilling.

(3) Monitoring usage.

(a) A utility shall monitor a customer's usage at least quarterly according to procedures that shall be included in its tariff.

(b) The procedures shall be designed to draw the utility's attention to unusual deviations in a customer's usage and shall provide for reasonable means by which the utility can determine the reasons for the unusual deviation.

(c) If a customer's usage is unduly high and the deviation is not otherwise explained, the utility shall test the customer's meter to determine whether the meter shows an average meter error greater than two (2) percent fast or slow.

(4) Usage investigation.

(a) If a utility's procedure for monitoring usage indicates that an investigation of a customer's usage is necessary, the utility shall notify the customer in writing:

1. Within ten (10) days of removing the meter from service, that a usage investigation is being conducted and the reasons for the investigation; and

2. Within ten (10) days upon completion of the investigation of the findings of the investigation.

(b) If knowledge of a serious situation requires more expeditious notice, the utility shall notify the customer by the most expedient means available.

(c) If the meter shows an average meter error greater than two (2) percent fast or slow, the utility shall maintain the meter in question at a secure location under the utility's control, for a period of one (1) year from the date the customer is notified of the finding of the investigation or if the customer has filed a formal complaint pursuant to KRS 278.260, the meter shall be maintained until the proceeding is resolved.

(5) Customer notification. If a meter is tested and it is found necessary to make a refund or back bill a customer, the customer shall be notified in substantially the following form:

On _____, (date)___, the meter bearing identification No.____ installed in your building located at _____(Street and Number) in _____(city) was tested at _____(on premises or elsewhere) and found to register _____(percent fast or slow). The meter was tested on _____(Periodic, Request, Complaint) test.

Based upon these test results the utility will _____(charge or credit) your account in the sum of $_____, which has been noted on your regular bill. If you desire a cash refund, rather than a credit to your account, of any amount overbilled, you shall notify this office in writing within seven (7) days of the date of this notice.

(6) A customer account shall be considered to be current while a dispute is pending pursuant to this section, if the customer

(a) Continues to make payments for the disputed period in accordance with historic usage, or if that data is not available, the average usage of similar customer loads; and

(b) Stays current on subsequent bills.

Section 12. Status of Customer Accounts During Billing Dispute. With respect to any billing dispute to which Section 11 of this administrative regulation does not apply, a customer account shall be considered to be current while the dispute is pending if the customer continues to make undisputed payments and stays current on subsequent bills.

Section 13. Customer's Request for Termination of Service. (1)(a) Any customer desiring service terminated or changed from one (1) address to another shall give the utility three (3) working days' notice in person, in writing, or by telephone, if the notice does not violate contractual obligations or tariff provisions.

(b) The customer shall not be responsible for charges for service beyond the three (3) day notice period if the customer provides access to the meter during the notice period in accordance with section 20 of this administrative regulation.

(c) If the customer notifies the utility of his request for termination by telephone, the burden of proof shall be on the customer to prove that service termination was requested if a dispute arises.

(2) Upon request that service be reconnected at any premises subsequent to the initial installation or connection to its service lines, the utility may, subject to subsection (3) of this section, charge the applicant a reconnect fee set out in its filed tariff.

(3) Any utility desiring to establish a termination or reconnection charge under the provisions of subsection (2) of this section shall apply for commission approval of the charge in accordance with the provisions of 807 KAR 5:011, Section 10.

Section 14. Utility Customer Relations. (1) A utility shall post and maintain regular business hours and provide representatives available to assist its customers and to respond to inquiries from the commission regarding customer complaints.

(a) Available telephone numbers. Each utility shall:

1. Maintain a telephone;

2. Publish, shall publish the telephone number in all service areas; and

3. Permit all customers to contact the utility's designated representative without charge.

(b) Designated representatives. Each utility shall designate at least one (1) representative to be available to answer customer questions, resolve disputes and negotiate partial payment plans at the utility's office. The designated representative shall be knowledgeable of this regulation; 807 KAR 5:001 Section 13; KRS 278.160(2); and KRS 278.225 regarding customer bills and service and shall be authorized to negotiate and accept partial payment plans.

1. Each water, sewer, electric, or gas utility having annual operating revenues of $250,000 or more shall make the designated representative available during the utility's established working hours not fewer than seven (7) hours per day, five (5) days per week, excluding legal holidays.

2. Each water, sewer, electric, or gas utility having annual operating revenues of less than $250,000 shall make the designated representative available during the utility's established working hours not fewer than seven (7) hours per day, one (1) day per week. Additionally, during the months of November through March, each utility providing gas or electric service shall make available

the designated representative during the utility's established working hours not fewer than five (5) days per week, excluding legal holidays.

(c) Display of customer rights.

1. Each utility shall prominently display in each office open to the public for customer service, and shall post on its Web site, if it maintains a Web site, a summary, prepared and provided by the commission of the customer's rights under this section and Section 16 of this administrative regulation.

2. If a customer indicates to any utility personnel that he or she is experiencing difficulty in paying a current utility bill, that employee shall refer the customer to the designated representative for an explanation of his or her rights.

(d) Utility personnel training.

1. The chief operating officer of any utility that provides electric or gas service to residential customers shall certify under oath annually the training of utility personnel assigned to counsel persons presenting themselves for utility service under the provisions of this section.

2. If the electric or gas utility is not incorporated in Kentucky and its corporate headquarters is not located in Kentucky, then its highest ranking officer located in Kentucky shall make the required certification.

3. Training shall include an annual review of this administrative regulation and policies regarding winter hardship and disconnect administrative regulations, Cabinet for Health and Family Services (or its designee) policy and programs for issuing certificates of need, and the utility's policies regarding collection, arrears repayment plans, budget billing procedures, and weather/health disconnect policies.

4. Certification shall include written notice to the commission by no later than October 31 of each year identifying the personnel trained, the date training occurred, and that the training met the requirements of this section.

(2) Partial payment plans. Each utility shall negotiate and accept reasonable partial payment plans at the request of residential customers who have received a termination notice for failure to pay as provided in Section 15 of this administrative regulation, except that a utility is not required to negotiate a partial payment plan with a customer who is delinquent under a previous partial payment plan. Partial payment plans shall be mutually agreed upon and subject to the conditions in this section and Section 15 of this administrative regulation. Partial payment plans which extend for a period longer than thirty (30) days shall be in writing, state the date and the amount of payment due, be dated and signed by the utility representative, and shall advise customers that service may be terminated without additional notice if the customer fails to meet the obligations of the plan.

(a) Budget payment plans for water, gas and electric utilities. A water, gas and electric utility shall develop and offer to its residential customers a budget payment plan based on historical or estimated usage whereby a customer may elect to pay a fixed amount each month in lieu of monthly billings based on actual usage. Under this plan, a utility shall issue bills which adjust accounts so as to bring each participating customer current once each twelve (12) month period. The customer's account may be adjusted at the end of the twelve (12) month period or through a series of levelized adjustments on a monthly basis if usage indicates that the account will not be current upon payment of the last budget amount. Budget payment plans shall be offered to residential customers and may be offered to other classes of customers. The provisions of the budget plan shall be included in the utility's tariffed rules. The utility shall provide information to its customers regarding the availability of budget payment plans.

(b) Partial payment plans for customers with medical certificates or certificates of need. For customers presenting certificates under the provisions of Sections 15(3) and 16 of this administrative regulation, gas and electric utilities shall negotiate partial payment plans based upon the customer's ability to pay, requiring accounts to become current not later than the following October 15. The plans may include, but are not limited to, budget payment plans and plans that defer payment of a portion of the arrearage until after the end of the heating season through a schedule of unequal payments.

(3) Utility inspections of service conditions prior to providing service. Each electric, gas, water and sewer utility shall inspect the condition of its meter and service connections before making service connections to a new customer so that prior or fraudulent use of the facilities will not be attributed to the new customer. The new customer shall be afforded the opportunity to be present at the inspections. The utility shall not be required to render service to any customer until all defects in the customer-owned portion of the service facilities have been corrected.

(4) Prompt connection of service. Except as provided in Section 16 of this administrative regulation, the utility shall reconnect existing service within twenty-four (24) hours or close of the next business day, whichever is later, and shall install and connect new service within seventy-two (72) hours or close of the next business day, whichever is later, when the cause for refusal or discontinuance of service has been corrected and the utility's tariffed rules and the commission's administrative regulations have been met.

(5) Advance termination notice. When advance termination notice is required, the termination notice shall be mailed or otherwise delivered to the customer's last known address. The termination notice shall be in writing, distinguishable and separate from any bill. The termination notice shall plainly state the reason for termination, that the termination date will not be affected by receipt of any subsequent bill, and that the customer has the right to dispute the reasons for termination. The termination notice shall also comply with the applicable requirements of Section 15 of this administrative regulation.

Section 15. Refusal or Termination of Service. (1) A utility may refuse or terminate service to a customer only under the following conditions except as provided in subsections (2) and (3) of this section:

(a) For noncompliance with the utility's tariffed rules or the commission's administrative regulations. A utility may terminate service for a customer's failure to comply with applicable tariffed rules or the commission's administrative regulations pertaining to that service. However, no utility shall terminate or refuse service to any customer for noncompliance with its tariffed rules or the commission's administrative regulations without first having made a reasonable effort to obtain customer compliance. After the effort by the utility, service may be terminated or refused only after the customer has been given at least ten (10) days written termination notice pursuant to Section 14(5) of this administrative regulation.

(b) For dangerous conditions. If a dangerous condition relating to a utility's service that could subject any person to imminent harm or result in substantial damage to the property of the utility or others is found to exist on the customer's premises, the service shall be refused or terminated without advance notice. The utility shall notify the customer immediately in writing and, if possible, orally of the reasons for the termination or refusal. The notice shall be recorded by the utility and shall include the corrective action to be taken by the customer or utility before service can be restored or provided. However, if the dangerous condition, such as gas piping or a gas-fired appliance, can be effectively isolated or secured from the rest of the system, the utility need discontinue service only to the affected piping or appliance.

(c) For refusal of access. When a customer refuses or neglects to provide reasonable access to the premises for installation, operation, meter reading, maintenance or removal of utility property, the utility may terminate or refuse service. The action shall be taken only when corrective action negotiated between the utility and customer has failed to resolve the situation and after the customer has been given at least ten (10) days' written notice of termination pursuant to Section 14(5) of this administrative regulation.

(d) For outstanding indebtedness. Except as provided in Section 16 of this administrative regulation, a utility shall not be required to furnish new service to any customer who is indebted to the utility for service furnished or other tariffed charges until that customer has paid his indebtedness.

(e) For noncompliance with state, local or other codes. A utility may refuse or terminate service to a customer if the customer does not comply with state, municipal or other codes, rules and administrative regulations applying to the service. A utility may terminate service pursuant to this subsection only after ten (10) days' written

notice is provided pursuant to Section 14(5) of this administrative regulation, unless ordered to terminate immediately by a governmental official.

(f) For nonpayment of bills. A utility may terminate service at a point of delivery for nonpayment of charges incurred for utility service at that point of delivery; however, no utility shall terminate service to any customer for nonpayment of bills for any tariffed charge without first having mailed or otherwise delivered an advance termination notice which complies with the requirements of Section 14(5) of this administrative regulation.

1. Termination notice requirements for electric or gas service. Each electric or gas utility proposing to terminate customer service for nonpayment shall mail or otherwise deliver to that customer ten (10) days' written notice of intent to terminate. Under no circumstances shall service be terminated before twenty-seven (27) days after the mailing date of the original unpaid bill. The termination notice to residential customers shall include written notification to the customer of the existence of local, state and federal programs providing for the payment of utility bills under certain conditions, and of the address and telephone number of the Cabinet for Health and Family Services (or its designee) to contact for possible assistance.

2 Termination notice requirements for water, sewer, or telephone service. Each water, sewer, or telephone utility proposing to terminate customer service for nonpayment shall mail or otherwise deliver to that customer five (5) days' written notice of intent to terminate. Under no circumstances shall service be terminated before twenty (20) days after the mailing date of the original unpaid bill.

3. The termination notice requirements of this subsection shall not apply if termination notice requirements to a particular customer or customers are otherwise dictated by the terms of a special contract between the utility and customer which has been approved by the commission.

4. This subsection shall not prevent or restrict a utility from discontinuing service when a sewer service provider requests discontinuance of a customer's water service pursuant to KRS 74.408, KRS 96.934 or KRS 220.510, nor shall it restrict a water district from discontinuing water service to a customer who has failed to pay his bill for sewer service that the water district has provided.

(g) For illegal use or theft of service. A utility may terminate service to a customer without advance notice if it has evidence that a customer has obtained unauthorized service by illegal use or theft. Within twenty-four (24) hours after termination, the utility shall send written notification to the customer of the reasons for termination or refusal of service upon which the utility relies, and of the customer's right to challenge the termination by filing a formal complaint with the commission. This right of termination is separate from and in addition to any other legal remedies which the utility may pursue for illegal use or theft of service. The utility shall not be required to restore service until the customer has complied with all tariffed rules of the utility and laws and administrative regulations of the commission.

(2) A utility shall not terminate service to a customer if:

(a) Payment for services is made. If, following receipt of a termination notice for nonpayment but prior to the actual termination of service payment of the amount in arrears is received by the utility, service shall not be terminated.

(b) A payment agreement is in effect. Service shall not be terminated for nonpayment if the customer and the utility have entered into a partial payment plan in accordance with Section 14 of this administrative regulation and the customer is meeting the requirements of the plan.

(c) A medical certificate is presented. Service shall not be terminated for thirty (30) days beyond the termination date if a physician, registered nurse or public health officer certifies in writing that termination of service will aggravate a debilitating illness or infirmity currently suffered by a resident living at the affected premises. A utility may refuse to grant consecutive extensions for medical certificates past the original thirty (30) days unless the certificate is accompanied by an agreed partial payment plan in accordance with Section 14 of this administrative regulation. A utility shall not require a new deposit from a customer to avoid termination of service for a thirty (30) day period who presents to the utility a medical certificate certified in writing by a physician, registered nurse or public health officer.

(3) A gas or electric utility shall not terminate service for thirty (30) days beyond the termination date if the Kentucky Cabinet for Health and Family Services (or its designee) certifies in writing that the customer is eligible for the cabinet's energy assistance program or household income is at or below 130 percent of the poverty level, and the customer presents the certificate to the utility. Customers eligible for certification from the Cabinet for Health and Family Services shall have been issued a termination notice between November 1 and March 31. Certificates shall be presented to the utility during the initial ten (10) day termination notice period. As a condition of the thirty (30) day extension, the customer shall exhibit good faith in paying his indebtedness by making a present payment in accordance with his ability to do so. In addition, the customer shall agree to a repayment plan in accordance with Section 14 of this administrative regulation which will permit the customer to become current in the payment of his bill as soon as possible but not later than October 15. A utility shall not require a new deposit from a customer to avoid termination of service for a thirty (30) day period who presents a certificate to the utility certified by the Cabinet for Health and Family Services (or its designee) that the customer is eligible for the cabinet's Energy Assistance Program or whose household income is at or below 130 percent of the poverty level.

Section 16. Winter Hardship Reconnection. (1) Notwithstanding the provisions of Section 14(4) of this administrative regulation to the contrary, an electric or gas utility shall reconnect service to a residential customer who has been disconnected for nonpayment of bills pursuant to Section 15(1)(f) of this administrative regulation prior to application for reconnection, and who applies for reconnection during the months from November 1 through March 31 if the customer or his agent:

(a) Presents a certificate of need from the Cabinet for Health and Family Services (or its designee), including a certification that a referral for weatherization services has been made in accordance with subsection (3) of this section;

(b) Pays one-third (1/3) of his outstanding bill or $200, whichever is less; and

(c) Agrees to a repayment schedule which would permit the customer to become current in the payment of his electric or gas bill as soon as possible but no later than October 15. However, if the customer applies for reconnection and the customer has an outstanding bill in excess of $600 and agrees to a repayment plan that would pay current charges and makes a good faith reduction in the outstanding bill consistent with his ability to pay, then the plan shall be accepted. In addition to payment of current charges, repayment schedules shall provide an option to the customer to select either one (1) payment of arrearages per month or more than one (1) payment of arrearages per month.

(d) A utility shall not require a new deposit from a customer whose service is reconnected due to paragraphs (a), (b) or (c) of this subsection.

(2) Certificate of need for reconnection. A customer who is eligible for energy assistance under the Cabinet for Health and Family Services' guidelines or is certified as being in genuine financial need, which is defined as any household with gross income at or below 130 percent of the poverty level, may obtain a certificate of need from the cabinet (or its designee) to be used in obtaining a service reconnection from the utility.

(3) Weatherization program. Customers obtaining a certificate of need under this administrative regulation shall agree to accept referral to and utilize weatherization services which are administered by the Cabinet for Health and Family Services. The provision and acceptance of weatherization services is contingent on the availability of funds and other program guidelines. Weatherization services include, but are not limited to, weather stripping, insulation and caulking.

(4) Customers who are current in their payment plans under subsection 1(c) of this section shall not be disconnected.

Section 17. Meter Testing. (1) All electric, gas and water utili-

ties furnishing metered service shall provide meter standards and test facilities, as more specifically set out under 807 KAR 5:022, 807 KAR 5:041 and 807 KAR 5:066. Before being installed for use by any customer, an electric, gas and water meter shall be tested and in good working order and shall be adjusted as close to the optimum operating tolerance as possible, as more specifically set out in 807 KAR 5:022, Section 8(3)(a), 807 KAR 5:041, Section 17(1)(a)-(c) and 807 KAR 5:066, Section 15(2)(a)-(b).

(2) A utility may have all or part of its testing of meters performed by another utility or agency approved by the commission for that purpose. Each utility having tests made by another agency or utility shall notify the commission of those arrangements in detail to include make, type and serial number of standards used to make the tests.

(3) No utility shall place in service any basic measurement standard required by these rules unless the calibration has been approved by the commission. All utilities or agencies making tests or checks for utility purposes shall notify the commission promptly of the adoption or deletion of any basic standards requiring commission approval of the calibration.

(4) An electric, gas and water utility or agency doing meter testing for a utility shall have in its employ meter testers certified by the commission. These certified meter testers shall perform tests as necessary to determine the accuracy of the utility's meters and to adjust the utility's meters to the degree of accuracy required by commission administrative regulations.

(5) A utility or agency desiring to have an employee certified as meter tester shall submit the name of each applicant on an "Application for Appointment of Meter Tester." The applicant shall pass a written test administered by commission staff and have his competency in the testing of meters verified by commission staff, at which time the applicant may be certified as a meter tester and furnished with a card authorizing him to perform meter tests.

(6) A utility or agency may employ apprentices in training for certification as meter testers. The apprentice period shall be a minimum of six (6) months, after which the meter tester apprentice shall comply with subsection (5) of this section. All tests performed during this period by an apprentice shall be witnessed by a certified meter tester.

Section 18. Meter Test Records. (1)(a) A complete record of all meter tests and adjustments and data sufficient to allow checking of test calculations shall be recorded by the meter tester. The record shall include:

1. Information to identify the unit and its location;
2. Date of tests;
3. Reason for the tests;
4. Readings before and after test;
5. Statement of "as found" and "as left" accuracies sufficiently complete to permit checking of calculations employed;
6. Notations showing that all required checks have been made;
7. Statement of repairs made, if any;
8. Identifying number of the meter;
9. Type and capacity of the meter; and
10. The meter constant.

(b) The complete record of tests of each meter shall be continuous for at least two (2) periodic test periods and shall in no case be less than two (2) years.

(2) Historical records. (a) A utility shall keep numerically arranged and properly classified records for each meter that it owns, uses and inventories.

(b) These records shall include:

1. Identification number,
2. Date of purchase,
3. Name of manufacturer,
4. Serial number,
5. Type,
6. Rating, and
7. Name and address of each customer on whose premises the meter has been in service with date of installation and removal.

(c) These records shall also contain condensed information concerning all tests and adjustments including dates and general results of the adjustments. The records shall reflect the date of the last test and indicate the proper date for the next periodic test required by the applicable commission administrative regulation.

(3) Sealing of meters. Upon completion of adjustment and test of any meter pursuant to the commission's administrative regulations, a utility shall affix to the meter a suitable seal in a manner that adjustments or registration of the meter cannot be altered without breaking the seal.

(4) A utility may store any or all of the meter test and historical data described or required in subsections (1) and (2) of this section in a computer storage and retrieval system upon notification to the commission. If a utility elects to use a computer storage and retrieval system, a back-up copy of the identical information shall be retained.

Section 19. Request Tests. (1) A utility shall make a test of any meter upon written request of any customer if the request is not made more frequently than once each twelve (12) months. The customer shall be given the opportunity to be present at the request tests. If the tests show the as found meter accuracy is within the limits allowed by 807 KAR 5:022 Section 8(3)(a)(1), 807 KAR 5:022 Section 8(3)(b)(1), 807 KAR 5:041 Section 17(1) or 807 KAR 5:066 Section 15(4), the utility may make a reasonable charge for the test. The amount of the charge shall be approved by the commission and set out in the utility's filed tariff. The utility shall maintain any meter removed from service for testing, in a secure location under the utility's control, for a period of one year from the date the customer is notified of the finding of the investigation or if the customer has filed a formal complaint pursuant to KRS 278.260, the meter shall be maintained until the proceeding is resolved, or the meter is picked up for testing by personnel from the commission's Meter Standards Laboratory.

(2) After having first obtained a test from the utility, any customer of the utility may request a meter test by the commission upon written application. The request shall not be made more frequently on one (1) meter than once each twelve (12) months. Upon request, personnel from the commission's Meter Standards Laboratory shall pick up the meter from the utility and maintain the meter for a minimum of one year from the date the customer is notified of the finding of the investigation or if the customer has filed a formal complaint pursuant to KRS 278.260, the meter shall be maintained until the proceeding is resolved.

Section 20. Access to Property. The utility shall at all reasonable hours have access to meters, service connections and other property owned by it and located on customer's premises for purposes of installation, maintenance, meter reading, operation, replacement or removal of its property when service is to be terminated. Any employee of the utility whose duties require him to enter the customer's premises shall wear a distinguishing uniform or other insignia, identifying him as an employee of the utility, or show a badge or other identification which will identify him as an employee of the utility.

Section 21. Pole Identification. (1) Each utility owning poles or other structures supporting its wires shall mark every pole or structure located within a built-up community with the initials or other distinguishing mark by which the owner of every structure can be readily determined.

(2) Identification marks may be of any type but shall be of a permanent material and shall be easily read from the ground at a distance of six (6) feet from the structure.

(3) If utilities' structures are located outside of a built-up community, at least every tenth structure shall be marked as set forth in subsection (2) of this section.

(4) All junction structures shall bear the identification mark and structure number of the owner.

(5) Poles need not be marked if they are clearly and unmistakably identifiable as the property of the utility.

(6) A utility shall either number its structures and maintain a numbering system or use some other method of identification so that each structure in the system can be easily identified.

Section 22. Cable Television Pole Attachments and Conduit Use. (1) Each utility owning poles or other facilities supporting its wires shall permit cable television system operators who have all

necessary licenses and permits to attach cables to poles and to use facilities, as customers, for transmission of signals to their patrons.

(2) The tariffs of the utility shall set forth the rates, terms and conditions under which the utility's facilities may be used.

(3) With respect to a complaint before the commission in any individual matter concerning cable television pole attachments final action shall be taken on the matter within a reasonable time, but no later than 360 days after filing of the complaint.

Section 23. System Maps and Records. (1) Each utility shall have on file at its principal office located within the state and shall file upon request with the commission a map or maps of suitable scale of the general territory it serves or holds itself ready to serve. If the maps are available in electronic format, they shall be filed as a PDF file or as a commission readable geographic information system (GIS) file. Maps generated on and after the effective date of this regulation shall be filed as a PDF file and as a commission readable geographic information system (GIS) file. The following data shall be available on the map or maps:

(a) Operating districts.

(b) Rate districts.

(c) Communities served.

(d) Location and size of transmission lines, distribution lines and service connections.

(e) Location and layout of all principal items of plant.

(f) Date of construction of all items of plant by year and month.

(2) In each division or district office there shall be available information relative to the utility's system that will enable the local representative to furnish necessary information regarding the rendering of service to existing and prospective customers.

(3) In lieu of showing the above construction information in (1)(f) on maps, a card record or suitable means may be used. The construction data about a plant feature, such as a pipeline, may be stored in a table and linked to the geographic plant feature by a unique identifier that is present in both the table and the geographic database. For all construction the records shall also show the date of construction by month and year.

Section 24. Location of Records. All records required by the commission's administrative regulations shall be kept in the office of the utility and shall be made available to representatives, agents or staff of the commission upon reasonable notice at all reasonable hours.

Section 25. Safety Program. Each utility shall adopt and execute a safety program, appropriate to the size and type of its operations. At a minimum, the safety program shall:

(1) Establish a safety manual with written guidelines for safe working practices and procedures to be followed by utility employees.

(2) Instruct employees in safe methods of performing their work. For electric utilities, this is to include the acceptable standards listed in 807 KAR 5:041 Section 3.

(3) Instruct employees who, in the course of their work, are subject to the hazard of electrical shock, asphyxiation or drowning, in accepted methods of artificial respiration.

Section 26. Inspection of Systems. (1) A utility shall adopt inspection procedures to assure safe and adequate operation of its facilities and compliance with the commission's rules and administrative regulations and shall file these procedures with the commission for review.

(2) Upon receipt of a report of a potentially hazardous condition at any utility facility, the utility shall inspect all portions of the system which are the subject of the report.

(3) Appropriate records shall be kept by a utility to identify the inspection made, deficiencies found and action taken to correct the deficiencies.

(4) Electric utility inspection. An electric utility shall make systematic inspections of its system in the manner set out below to insure that the commission's safety requirements are being met. These inspections shall be made as often as necessary but not less frequently than is set forth below for various classes of facilities and types of inspection.

(a) As a part of operating procedure, each utility shall continuously monitor and inspect all production facilities regularly operated and manned.

(b) At intervals not to exceed six (6) months, the utility shall inspect:

1. Unmanned production facilities, including peaking units not on standby status, and all monitoring devices, for any evidence of abnormality.

2. Transmission switching stations where the primary voltage is sixty-nine (69) KV or greater, for damage to or deterioration of components including structures, fences, gauges monitoring devices.

3. Underground network transformers and network protectors in vaults located in buildings or under sidewalks, for leaks, condition of case, connections, temperature and overloading.

4. Electric lines operating at sixty-nine (69) KV or greater, including insulators, conductors, and supporting facilities, for damage, ~~or~~ deterioration and vegetation management consistent with the utility's vegetation management practices.

(c) In addition to the requirements set out in subsection 4(b) of this section, all electric lines operating at sixty-nine (69) KV or greater, including insulators, conductors and supporting facilities shall be inspected from the ground for damage, deterioration and vegetation management consistent with the utility's vegetation management practices at intervals not to exceed:

1. Six (6) years for each electric line supported by a wood pole or other wood support structure or

2. Twelve (12) years for each electric line supported by a pole or other support structure constructed of steel or other non-wood material.

(d) At intervals not to exceed one (1) year, the utility shall inspect:

1. Production facilities maintained on a standby status. Except for remotely controlled facilities, all production facilities shall also be thoroughly inspected.

2. Distribution Substations with primary voltage of fifteen (15) to sixty-nine (69) KV.

(e) At intervals not to exceed two (2) years, the utility shall inspect all electric facilities operating at voltages of less than sixty-nine (69) KV, to the point of service including insulators, conductors and supporting facilities from the ground for damage, deterioration and vegetation management consistent with the utility's vegetation management practices.

(f) The utility shall inspect other facilities as follows.

1. Utility buildings shall be inspected for compliance with safety codes at least annually.

2. Construction equipment shall be inspected for defects, wear and operational hazards at least quarterly.

(g) Aerial inspections shall not be used as the sole basis for evidence of compliance with the commission's administrative regulations.

(5) Gas utility inspection. A gas utility shall make systematic inspections of its system to insure that the commission's safety requirements are being met. These inspections shall be made as often as necessary but not less frequently than is prescribed or recommended by the Department of Transportation, 49 C.F.R. Part 192 Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards, for the various classes of facilities.

(a) The following maximum time intervals are prescribed for certain inspections provided for in 49 C.F.R. Part 192 Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards, with respect to which intervals are not specified, and for certain additional inspections not provided for in the code.

1. At intervals not to exceed every fifteen (15) months but at least once each calendar year, the utility shall inspect and visually examine:

a. Production wells, storage wells, and well equipment, including their exterior components.

b. Pressure limiting stations, relief devices, pressure regulating stations, and vaults.

c. Accessibility of the curb box and valve on a service line.

2. At intervals not to exceed three (3) years, meters using remote reading technology shall be manually inspected and visually

examined for proper working condition and readings verified.

3. The utility shall inspect other facilities as follows:

a. Utility buildings shall be inspected for compliance with safety codes at least annually.

b. Construction equipment under the control of the utility shall be inspected for defects, wear and operational hazards at least quarterly.

(b) At intervals not to exceed the periodic meter test intervals, individual residential customer service regulators, vents and relief valve vents shall be checked for satisfactory operation.

(c) At intervals not to exceed the periodic meter test intervals, the curb box and valve on the service line shall be inspected for operable condition.

(d) Aerial inspections shall not be used as the sole basis for evidence of compliance with the commission's administrative regulations.

(6) Water utility inspections. Each water utility shall make systematic inspections of its system in the manner set out below to insure that the commission's safety requirements are being met. These inspections shall be made as often as necessary but not less frequently than is set forth below for various classes of facilities and types of inspection.

(a) The utility shall annually inspect all structures pertaining to source of supply for their safety and physical and structural integrity, including dams, intakes, and traveling screens. The utility shall semiannually inspect supply wells, their motors and structures, including electric power wiring and controls for proper and safe operation.

(b) The utility shall annually inspect all structures pertaining to purification for their safety, physical and structural integrity and for leaks, including sedimentation basins, filters, and clear wells; chemical feed equipment; pumping equipment and water storage facilities, including electric power wiring and controls; hydrants, mains, meters, meter settings and valves.

(c) The utility shall monthly inspect construction equipment and vehicles for defects, wear, operational hazards, lubrication, and safety features.

(7) Telephone utility inspection. Each telephone utility shall make systematic inspections of its system in the manner set out below to insure that the commission's safety requirements are being met. The inspections shall be made as often as necessary but not less frequently than is set forth below for various classes of facilities and types of inspection.

(a) The utility shall inspect aerial plant for electrical hazards, proper clearance for electric clearances of facilities, vegetation management consistent with the utility's vegetation management practices and climbing safety every two (2) years.

(b) The utility shall inspect underground plant for presence of gas, proper clearance from electric facilities and safe working conditions at least annually.

(c) The utility shall inspect utility-provided station equipment and connections for external electrical hazards, damaged instruments or wiring, appropriate protection from lightning and safe location of equipment and wiring when on a customer's premises.

(d) The utility shall inspect utility buildings for compliance with safety codes at least annually.

(e) The utility shall inspect construction equipment for defects, wear and operational hazards at least quarterly.

(f) Aerial inspections shall not be used as the sole basis for evidence of compliance with commission administrative regulations.

(8) Sewage utility inspection. Each sewage utility shall make systematic inspections of its system in the manner set out in 807 KAR 5:071 to ensure that the commission's safety requirements are being met. The inspections shall be made as often as necessary but not less frequently than is set out in 807 KAR 5:071.

Section 27. Reporting of Accidents, Property Damage or Loss of Service. (1) Within two (2) hours following discovery each utility, other than a natural gas utility, shall notify the commission by telephone or electronic mail of any utility related accident which results in:

(a) Death; or shock or burn requiring medical treatment at a hospital or similar medical facility, or any accident requiring inpatient overnight hospitalization;

(b) Actual or potential property damage of $25,000 or more; or

(c) Loss of service for four (4) or more hours to ten (10) percent or 500 or more of the utility's customers, whichever is less.

(2) A summary written report shall be submitted by the utility to the commission within seven (7) calendar days of the utility related accident. For good cause shown, the executive director of the commission, may, upon application in writing, allow a reasonable extension of time for submission of this report.

(3) Natural gas utilities shall report utility related accidents in accordance with the provisions of 807 KAR 5:027.

Section 28. Deviations from Administrative Regulation. In special cases, for good cause shown, the commission may permit deviations from this administrative regulation.

Section 29. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Annual Financial and Statistical Reports:

1. FERC Form 1 – Annual Report of Major Electric Utilities, Licensees and Others; March 2007;

2. Annual Reporting Form for Rural Electric Cooperative Corporations; July 2012;

3. FERC Form 2 – Annual Report of Major Natural Gas Companies; December 2007;

4. Annual Reporting Form for Class C and D Gas Utilities; August 2005;

5. Annual Reporting Form for Local Exchange Carriers; August 2005;

6. Annual Reporting Form for Local Exchange Carriers – Kentucky Operations Only; August 2004;

7. Annual Reporting Form for Water Company – Class A & B; July 2012;

8. Annual Reporting Form for Water Company – Class C; July 2012;

9. Annual Reporting Form for Water Districts/Water Associations – Class A & B; July 2012;

10. Annual Reporting Form for Water Districts/Water Associations – Class C; July 2012;

11. Annual Reporting Form for Sewer Utilities; September 2005;

(b) Quarterly Meter Reports:

1. Quarterly Meter Report-Electric; August 2011;

2. Quarterly Meter Report-Water; July 2012;

3. Quarterly Meter Report-Gas; July 2007;

(c) Non-payment Disconnection/Reconnection Reports:

1. Water Utility-Non-Payment Disconnection/Reconnection Report; February 2012;

2. Electric Utility-Non-Payment Disconnection/Reconnection Report; September 2000;

3. Gas Utility Non-Payment Disconnection/Reconnection Report; September 2000;

(d) Application for Appointment of Meter Tester

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law at the commission's offices at 211 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at http://psc.ky.gov/.[~~Section 1. Definitions. (1) "Utility" means a utility as defined in KRS 278.010(3).~~

~~(2) "Customer" means any person, firm, corporation or body politic applying for or receiving service from any utility.~~

~~Section 2. General Provisions. (1) The adoption of administrative regulations by the commission shall not preclude the commission from altering or amending the same in whole or in part, or from requiring any other or additional service, equipment, facility, or standards, either upon request, or upon its own motion, or upon the application of the utility. No administrative regulation of the commission shall in any way relieve a utility from any of its duties under the laws of Kentucky.~~

~~(2) Any reference to standards or codes in commission administrative regulations shall not prohibit utilities employing competent engineers from continuing or initiating experimental work and installations which tend to improve, decrease the cost of, or increase the safety of their service.~~

~~Section 3. Reports. (1) Financial and statistical reports. Every utility shall file annually a financial and statistical report upon forms to be furnished by the commission. This report shall be based upon the accounts set up in conformity with the uniform system of accounts for utilities. This report shall be filed on or before March 31, each year, for the preceding calendar year. The forms for this report are hereby incorporated by reference, and may be obtained at the commission's offices at 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, Monday through Friday between the hours of 8 a.m. and 4:30 p.m. local time..For good cause shown, the executive director of the commission may, upon application in writing, allow a reasonable extension of time for such filing.~~

~~(2) Report of meters, customers and refunds. Every gas, electric and water utility shall make periodic reports on forms prescribed by the commission, of meter tests, number of customers and amount of refunds. These forms are hereby incorporated by reference, and may be obtained at the commission's offices at 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, Monday through Friday between the hours of 8 a.m. and 4:30 p.m. local time.~~

~~(3) Report of terminations for nonpayment of bills. Each electric and gas utility shall, report annually the number of residential accounts terminated for nonpayment. These reports shall be filed no later than August 15 and shall cover the period ending June 30.~~

~~(4) Other reports. Every utility shall make such other reports as the commission may at its discretion from time to time require.~~

~~(5) Record and report retention. All records and reports shall be retained in accordance with the uniform system of accounts unless otherwise specified.~~

~~(6) Transmittal letter. All reports shall be accompanied by two (2) copies of a transmittal letter describing the report being furnished.~~

~~Section 4. Service Information. (1) The utility shall, on request, give its customers or prospective customers such information as is reasonably possible in order that they may secure safe, efficient and continuous service. The utility shall inform its customers of any change made or proposed in the character of its service which might affect the efficiency, safety, or continuity of operation.~~

~~(2) Prior to making any substantial change in the character of the service furnished, which would affect the efficiency, adjustment, speed or operation of the equipment or appliances of any customer, the utility shall obtain the approval of the commission. The application shall show the nature of the change to be made, the number of customers affected, and the manner in which they will be affected.~~

~~(3) The utility shall inform each applicant for service of each type, class and character of service available at his location.~~

~~Section 5. Special Rules or Requirements. (1) No utility shall establish any special rule or requirement without first obtaining the approval of the commission on proper application.~~

~~(2) A customer who has complied with commission administrative regulations shall not be denied service for failure to comply with the utility's rules which have not been made effective in the manner prescribed by the commission.~~

~~(3) Obtaining easements and rights-of-way necessary to extend service shall be the responsibility of the utility. No utility shall require a prospective customer to obtain easements or rights-of-way on property not owned by the prospective customer as a condition for providing service. The cost of obtaining easements or rights-of-way shall be included in the total per foot cost of an extension, and shall be apportioned among the utility and customer in accordance with the applicable extension administrative regulation.~~

~~Section 6. Billings, Meter Readings and Information. (1) Information on bills. Each bill for utility service issued periodically by a utility shall clearly show the following, if applicable: class of service; present and last preceding meter readings; date of the present reading; number of units consumed; meter constant, if any; net amount for service rendered; all taxes; any adjustments; and the gross amount of the bill. The date after which a penalty may apply to the gross amount shall be indicated. Estimated or calculated bills shall be distinctly marked as such. The rate schedule under which the bill is computed shall be furnished under one (1) of the following methods:~~

~~(a) By printing it on the bill.~~

~~(b) By publishing it in a newspaper of general circulation once each year.~~

~~(c) By mailing it to each customer once each year.~~

~~(d) By providing a place on each bill where a customer may indicate his desire for a copy of the applicable rates. The utility shall mail the customer a copy by return first class mail.~~

~~(2) Flat rates. Flat rates for unmetered service shall approximate as closely as possible the utility's rates for metered service. The rate schedule shall clearly set out the basis upon which consumption is estimated.~~

~~(3) Bill format. Each utility shall include the billing form to be used by it, or its contents, in its tariffed rules.~~

~~(4) Meter readings. Registration of each meter shall read in the same units as used for billing unless a conversion factor is shown on the billing form.~~

~~(5) Frequency of meter reading. Each utility, except if prevented by reasons beyond its control, shall read customer meters at least quarterly, except that each utility using customer-read meter information shall read each revenue related meter on its system at least once during each calendar year. Records shall be kept by the utility to insure that this information is available to commission staff and any customer requesting this information. If, due to reasons beyond its control, a utility is unable to read a meter in accordance with this subsection, the utility shall record the date and time the attempt was made, if applicable, and the reason the utility was unable to read the meter.~~

~~Section 7. Deposits. (1) Determination of deposits. A utility may require from any customer a minimum cash deposit or other guaranty to secure payment of bills, except from those customers qualifying for service reconnection under Section 15 of this administrative regulation. The method of determining the amount of a cash deposit may differ between classes of customers, but shall be uniform for all customers within the same class. The amount of a cash deposit shall be determined by one (1) of the following methods:~~

~~(a) Calculated deposits. If actual usage data is available for the customer at the same or similar premises, the deposit amount shall be calculated using the customer's average bill for the most recent twelve (12) month period. If actual usage data is not available, the deposit amount shall be based on the average bills of similar customers and premises in the system. Deposit amounts shall not exceed two-twelfths (2/12) of the customer's actual or estimated annual bill where bills are rendered monthly, three-twelfths (3/12) where bills are rendered bimonthly, or four-twelfths (4/12) where bills are rendered quarterly.~~

~~(b) Equal deposits. The utility may establish an equal deposit amount for each class based on the average bill of customers in that class. Deposit amounts shall not exceed two-twelfths (2/12) of the average bill of customers in the class where bills are rendered monthly, three-twelfths (3/12) where bills are rendered bimonthly, or four-twelfths (4/12) where bills are rendered quarterly.~~

~~(c) Recalculation of deposits. If the utility will or may retain either an equal or calculated deposit for more than eighteen (18) months, it shall notify customers in writing that, at the customer's request, the deposit will be recalculated every eighteen (18) months based on actual usage of the customer. The notice of deposit recalculation shall be included either on the customer's application for service or on the receipt of deposit, or may be included annually with or on customer bills. The notice of deposit recalculation shall state that if the deposit on account differs by more than ten (10) dollars for residential customers, or by more than ten (10) percent for nonresidential customers, from the deposit calculated on actual usage, then the utility shall refund any over-collection and may collect any underpayment. Refunds shall be made either by check or by credit to the customer's bill, except that a utility shall not be required to refund any excess deposit if the customer's bill is delinquent at the time of recalculation.~~

~~(2) Waiver of deposits. Deposits may be waived at the discretion of the utility in accordance with its currently effective tariff based upon a customer's showing of satisfactory credit and payment history.~~

~~(3) Additional deposit requirement. If a deposit has been waived, as allowed in subsection (2) of this section, or has been returned and the customer fails to maintain a satisfactory payment record as defined in the utility's currently effective tariff, the utility~~

~~may require that a deposit be made. If substantial change in usage has occurred, the utility may require that an additional deposit be made. No additional or subsequent deposit shall be required of residential customers whose payment record is satisfactory, unless the customer's classification of service changes, except as provided in subsection (1)(c) of this section.~~

~~(4) Receipt of deposit. The utility shall issue to every customer from whom a deposit is collected a receipt of deposit. The receipt shall show the name of the customer, location of the service or customer account number, date, and amount of deposit. If the notice of recalculation described in subsection (1)(c) of this section is not included in the utility's application for service or mailed with customer bills, the receipt of deposit shall contain the notification. If deposit amounts change, the utility shall issue a new receipt of deposit to the customer.~~

~~(5) Deposits as a condition of service. Except as otherwise provided by Section 15 of this administrative regulation, customer service may be refused or discontinued pursuant to Section 14 of this administrative regulation if payment of requested deposits is not made.~~

~~(6) Interest on deposits. Interest shall accrue on all deposits at the rate prescribed by law, beginning on the date of deposit. Interest accrued shall be refunded to the customer or credited to the customer's bill on an annual basis, except that a utility shall not be required to refund or credit interest on deposits if the customer's bill is delinquent on the anniversary of the deposit date. All interest that has accrued as of the effective date of this administrative regulation shall be refunded or credited to the customer's bill on the first anniversary of the deposit date after the effective date of this administrative regulation. If interest is paid or credited to the customer's bill prior to twelve (12) months from the date of deposit, the payment or credit shall be on a prorated basis. Upon termination of service, the deposit, any principal amounts, and interest earned and owing shall be credited to the final bill with any remainder refunded to the customer.~~

~~(7) Tariff requirements. Each utility which chooses to require deposits shall establish and include in its filed tariff the deposit policy to be utilized. This policy shall include:~~

~~(a) The method by which deposit amounts will be determined for each customer class;~~

~~(b) Standard criteria for determining when a deposit will be required or waived;~~

~~(c) The deposit amount for each customer class if the method in subsection (1)(b) of this section is used;~~

~~(d) The period of time the utility will retain the deposit, or the conditions under which the utility will refund the deposit, or both if applicable;~~

~~(e) The manner in which interest on deposits will be calculated and accrued and refunded or credited to customers' bills.~~

~~Section 8. Special Charges. (1) A utility may make special nonrecurring charges to recover customer-specific costs incurred which would otherwise result in monetary loss to the utility or increased rates to other customers to whom no benefits accrue from the service provided or action taken. Any utility desiring to establish or change any special nonrecurring charge shall apply for commission approval of such charge in accordance with the provisions of 807 KAR 5:011, Section 10.~~

~~(2) Special charges shall be included in the utility's tariff and applied uniformly throughout the area served by the utility. They shall relate directly to the service performed or action taken and shall yield only enough revenue to pay the expenses incurred in rendering the service.~~

~~(3) Special charges may include, but are not limited to:~~

~~(a) Turn-on charge. A turn-on charge may be assessed for a new service turn on, seasonal turn on or temporary service. A turn-on charge shall not be made for initial installation of service where a tap fee is applicable.~~

~~(b) Reconnect charge. A reconnect charge may be assessed to reconnect a service which has been terminated for nonpayment of bills or violation of the utility's rules or commission administrative regulations. Customers qualifying for service reconnection under Section 15 of this administrative regulation shall be exempt from reconnect charges.~~

~~(c) Termination or field collection charge. A charge may be assessed when a utility representative makes a trip to the premises of a customer for the purpose of terminating service. The charge may be assessed if the utility representative actually terminates service or if, in the course of the trip, the customer pays the delinquent bill to avoid termination. The charge may also be made if the utility representative agrees to delay termination based on the customer's agreement to pay the delinquent bill by a specific date. The utility may make a field collection charge only once in any billing period.~~

~~(d) Special meter reading charge. This charge may be assessed when a customer requests that a meter be reread, and the second reading shows the original reading was correct. No charge shall be assessed if the original reading was incorrect. This charge may also be assessed when a customer who reads his own meter fails to read the meter for three (3) consecutive months, and it is necessary for a utility representative to make a trip to read the meter.~~

~~(e) Meter resetting charge. A charge may be assessed for resetting a meter if the meter has been removed at the customer's request.~~

~~(f) Meter test charge. This charge may be assessed if a customer requests the meter be tested pursuant to Section 18 of this administrative regulation, and the tests show the meter is not more than two (2) percent fast. No charge shall be made if the test shows the meter is more than two (2) percent fast.~~

~~(g) Returned check charge. A returned check charge may be assessed if a check accepted for payment of a utility bill is not honored by the customer's financial institution.~~

~~(h) Late payment penalty. A penalty may be assessed if a customer fails to pay a bill for services by the due date shown on the customer's bill. The penalty may be assessed only once on any bill for rendered services. Any payment received shall first be applied to the bill for service rendered. Additional penalty charges shall not be assessed on unpaid penalty charges.~~

~~Section 9. Customer Complaints to the Utility. Upon complaint to the utility by a customer at the utility's office, by telephone or in writing, the utility shall make a prompt and complete investigation and advise the complainant of its findings. The utility shall keep a record of all written complaints concerning its service. This record shall show the name and address of the complainant, the date and nature of the complaint, and the adjustment or disposition of the complaint. Records shall be maintained for two (2) years from the date of resolution of the complaint. If a written complaint or a complaint made in person at the utility's office is not resolved, the utility shall provide written notice to the complainant of his right to file a complaint with the commission, and shall provide him with the address and telephone number of the commission. If a telephonic complaint is not resolved, the utility shall provide at least oral notice to the complainant of his right to file a complaint with the commission and the address and telephone number of the commission.~~

~~Section 10. Bill Adjustment for Gas, Electric and Water Utilities. (1) If upon periodic test, request test, or complaint test a meter in service is found to be more than two (2) percent fast, additional tests shall be made to determine the average error of the meter. Said tests shall be made in accordance with commission administrative regulations applicable to the type of meter involved.~~

~~(2) If test results on a customer's meter show an average error greater than two (2) percent fast or slow, or if a customer has been incorrectly billed for any other reason, except in an instance where a utility has filed a verified complaint with the appropriate law enforcement agency alleging fraud or theft by a customer, the utility shall immediately determine the period during which the error has existed, and shall recompute and adjust the customer's bill to either provide a refund to the customer or collect an additional amount of revenue from the underbilled customer. The utility shall readjust the account based upon the period during which the error is known to have existed. If the period during which the error existed cannot be determined with reasonable precision, the time period shall be estimated using such data as elapsed time since the last meter test, if applicable, and historical usage data for the customer. If that data is not available, the average usage of similar customer loads shall be used for comparison purposes in calculating the time period. If the customer and the utility are unable to agree on an estimate of the time period during which the error existed, the com-~~

~~mission shall determine the issue. In all instances of customer overbilling, the customer's account shall be credited or the overbilled amount refunded at the discretion of the customer within thirty (30) days after final meter test results. A utility shall not require customer repayment of any underbilling to be made over a period shorter than a period coextensive with the underbilling.~~

~~(3) Monitoring usage. Each utility shall monitor customers' usage at least annually according to procedures which shall be included in its tariff on file with the commission. The procedures shall be designed to draw the utility's attention to unusual deviations in a customer's usage and shall provide for reasonable means by which the utility can determine the reasons for the unusual deviation. If a customer's usage is unduly high and the deviation is not otherwise explained, the utility shall test the customer's meter to determine whether the meter shows an average error greater than two (2) percent fast or slow.~~

~~(4) Usage investigation. If the utility's procedure for monitoring usage indicates that an investigation of a customer's usage is necessary, the utility shall notify the customer in writing either during or immediately after the investigation of the reasons for the investigation, and of the findings of the investigation. If knowledge of a serious situation requires more expeditious notice, the utility shall notify the customer by the most expedient means available.~~

~~(5) Customer notification. If a meter is tested and it is found necessary to make a refund or back bill a customer, the customer shall be notified in substantially the following form:~~

~~On _____, 19___, the meter bearing identification No. ____ installed in your building located at _____ (Street and Number) in _____ (city) was tested at _____ (on premises or elsewhere) and found to register _____ (percent fast or slow). The meter was tested on _____ (Periodic, Request, Complaint) test.~~

~~Based upon this we herewith _____ (charge or credit) with the sum of $_____, which amount has been noted on your regular bill. If you desire a cash refund, rather than a credit to your account, of any amount overbilled, you must notify this office in writing within seven (7) days of the date of this notice.~~

~~(6) Customer accounts shall be considered to be current while a dispute is pending pursuant to this section, as long as a customer continues to make payments for the disputed period in accordance with historic usage, or if that data is not available, the average usage of similar customer loads, and stays current on subsequent bills.~~

~~Section 11. Status of Customer Accounts During Billing Dispute. With respect to any billing dispute to which Section 10 of this administrative regulation does not apply, customer accounts shall be considered to be current while the dispute is pending as long as a customer continues to make undisputed payments and stays current on subsequent bills.~~

~~Section 12. Customer's Request for Termination of Service.~~

~~(1) Any customer desiring service terminated or changed from one address to another shall give the utility three (3) working days' notice in person, in writing, or by telephone, provided such notice does not violate contractual obligations or tariff provisions. The customer shall not be responsible for charges for service beyond the three (3) day notice period if the customer provides reasonable access to the meter during the notice period. If the customer notifies the utility of his request for termination by telephone, the burden of proof is on the customer to prove that service termination was requested if a dispute arises.~~

~~(2) Upon request that service be reconnected at any premises subsequent to the initial installation or connection to its service lines, the utility may, subject to subsection (3) of this section, charge the applicant a reconnect fee set out in its filed tariff.~~

~~(3) Any utility desiring to establish a termination or reconnection charge under the provisions of subsection (2) of this section, shall apply for commission approval of such charge in accordance with the provisions of 807 KAR 5:011, Section 10.~~

~~Section 13. Utility Customer Relations.~~

~~(1) A utility shall post and maintain regular business hours and provide representatives available to assist its customers.~~

~~(a) Available telephone numbers. Each utility shall maintain a telephone, shall publish the telephone number in all service areas, and shall permit all customers to contact the utility's designated representative without charge.~~

~~(b) Designated representatives. Each utility shall designate at least one (1) representative to be available to answer customer questions, resolve disputes and negotiate partial payment plans at the utility's office. The designated representative shall be knowledgeable of the commission's administrative regulations regarding customer bills and service and shall be authorized to negotiate and accept partial payment plans.~~

~~1. Each major gas or electric utility (as defined by the Uniform System of Accounts) and each water and sewer utility having annual operating revenues of $250,000 or more shall make the designated representative available during the utility's established working hours not fewer than seven (7) hours per day, five (5) days per week, excluding holidays.~~

~~2. Each nonmajor gas or electric utility (as defined by the Uniform System of Accounts) and each water or sewer utility having annual operating revenues of less than $250,000 shall make the designated representative available during the utility's established working hours not fewer than seven (7) hours per day, one (1) day per week. Additionally, during the months of November through March, each previously defined nonmajor utility providing gas or electric service shall make available the designated representative during the utility's established working hours not fewer than five (5) days per week.~~

~~(c) Display of customer rights. Each utility shall prominently display in each office in which payment is received a summary, to be prepared and provided by the commission, of the customer's rights under this section and Section 15 of this administrative regulation. If a customer indicates to any utility personnel that he is experiencing difficulty in paying a current utility bill, that employee shall refer the customer to the designated representative for explanation of the customer's rights.~~

~~(d) Utility personnel training. The chief operating officer of each electric and gas utility providing service to residential customers shall be required to certify each year the training of utility personnel assigned to counsel persons presenting themselves for utility service under the provisions of this section. Training is hereby defined as an annual review of commission administrative regulations and policies regarding winter hardship and disconnect administrative regulations, Cabinet for Health and Family Services policy and programs for issuing certificates of need, and the utility's policies regarding collection, arrears repayment plans, budget billing procedures, and weather/health disconnect policies. Certification is defined as written notice to the commission by no later than October 31 of each year identifying the personnel trained, the date training occurred, and that the training met the requirements of this section.~~

~~(2) Partial payment plans. Each utility shall negotiate and accept reasonable partial payment plans at the request of residential customers who have received a termination notice for failure to pay as provided in Section 14 of this administrative regulation, except that a utility is not required to negotiate a partial payment plan with a customer who is delinquent under a previous partial payment plan. Partial payment plans shall be mutually agreed upon and subject to the conditions in this section and Section 14 of this administrative regulation. Partial payment plans which extend for a period longer than thirty (30) days shall be in writing and shall advise customers that service may be terminated without additional notice if the customer fails to meet the obligations of the plan.~~

~~(a) Budget payment plans for gas and electric utilities. Each gas and electric utility shall develop and offer to its residential customers a budget payment plan based on historical or estimated usage whereby a customer may elect to pay a fixed amount each month in lieu of monthly billings based on actual usage. Under such plans, utilities shall issue bills which adjust accounts so as to bring each participating customer current once each twelve (12) month period. The customer's account may be adjusted at the end of the twelve (12) month period or through a series of levelized adjustments on a monthly basis if usage indicates that the account will not be current upon payment of the last budget amount. Budget payment plans shall be offered to residential customers but may be extended to other classes of customers. The provisions of the budget plan shall be included in the utility's tariffed rules. The utility shall provide information to its customers regarding the availability~~

~~of such budget payment plans.~~

~~(b) Partial payment plans for customers with medical certificates or certificates of need. For customers presenting certificates under the provisions of Sections 14(3) and 15 of this administrative regulation, gas and electric utilities shall negotiate partial payment plans based upon the customer's ability to pay, requiring accounts to become current not later than the following October 15. Such plans may include, but are not limited to, budget payment plans and plans that defer payment of a portion of the arrearage until after the end of the heating season through a schedule of unequal payments.~~

~~(3) Utility inspections of service conditions prior to providing service. Each electric, gas, water and sewer utility shall inspect the condition of the meter and service connections before making service connections to a new customer so that prior or fraudulent use of the facilities will not be attributed to the new customer. The new customer shall be afforded the opportunity to be present at such inspections. The utility shall not be required to render service to any customer until any defects in the customer-owned portion of the service facilities have been corrected.~~

~~(4) Prompt connection of service. Except as provided in Section 15 of this administrative regulation, the utility shall reconnect existing service within twenty-four (24) hours, and shall install and connect new service within seventy-two (72) hours, when the cause for refusal or discontinuance of service has been corrected and the utility's tariffed rules and commission administrative regulations have been met.~~

~~(5) Advance termination notice. When advance termination notice is required, the termination notice shall be mailed or otherwise delivered to the last known address of the customer. The termination notice shall be in writing, distinguishable and separate from any bill. The termination notice shall plainly state the reason for termination, that the termination date will not be affected by receipt of any subsequent bill, and that the customer has the right to dispute the reasons for termination. The termination notice shall also comply with the applicable requirements of Section 14 of this administrative regulation.~~

~~Section 14. Refusal or Termination of Service. (1) A utility may refuse or terminate service to a customer only under the following conditions except as provided in subsections (2) and (3) of this section:~~

~~(a) For noncompliance with the utility's tariffed rules or commission administrative regulations. A utility may terminate service for failure to comply with applicable tariffed rules or commission administrative regulations pertaining to that service. However, no utility shall terminate or refuse service to any customer for noncompliance with its tariffed rules or commission administrative regulations without first having made a reasonable effort to obtain customer compliance. After such effort by the utility, service may be terminated or refused only after the customer has been given at least ten (10) days written termination notice pursuant to Section 13(5) of this administrative regulation.~~

~~(b) For dangerous conditions. If a dangerous condition relating to the utility's service which could subject any person to imminent harm or result in substantial damage to the property of the utility or others is found to exist on the customer's premises, the service shall be refused or terminated without advance notice. The utility shall notify the customer immediately in writing and, if possible, orally of the reasons for the termination or refusal. Such notice shall be recorded by the utility and shall include the corrective action to be taken by the customer or utility before service can be restored or provided. However, if the dangerous condition, such as gas piping or a gas-fired appliance, can be effectively isolated or secured from the rest of the system, the utility need discontinue service only to the affected piping or appliance.~~

~~(c) For refusal of access. When a customer refuses or neglects to provide reasonable access to the premises for installation, operation, meter reading, maintenance or removal of utility property, the utility may terminate or refuse service. Such action shall be taken only when corrective action negotiated between the utility and customer has failed to resolve the situation and after the customer has been given at least ten (10) days' written notice of termination pursuant to Section 13(5) of this administrative regulation.~~

~~(d) For outstanding indebtedness. Except as provided in Section 15 of this administrative regulation, a utility shall not be required to furnish new service to any customer who is indebted to the utility for service furnished or other tariffed charges until that customer has paid his indebtedness.~~

~~(e) For noncompliance with state, local or other codes. A utility may refuse or terminate service to a customer if the customer does not comply with state, municipal or other codes, rules and administrative regulations applying to such service. A utility may terminate service pursuant to this subsection only after ten (10) days' written notice is provided pursuant to Section 13(5) of this administrative regulation, unless ordered to terminate immediately by a governmental official.~~

~~(f) For nonpayment of bills. A utility may terminate service at a point of delivery for nonpayment of charges incurred for utility service at that point of delivery; however, no utility shall terminate service to any customer for nonpayment of bills for any tariffed charge without first having mailed or otherwise delivered an advance termination notice which complies with the requirements of Section 13(5) of this administrative regulation.~~

~~1. Termination notice requirements for electric or gas service. Each electric or gas utility proposing to terminate customer service for nonpayment shall mail or otherwise deliver to that customer ten (10) days' written notice of intent to terminate. Under no circumstances shall service be terminated before twenty-seven (27) days after the mailing date of the original unpaid bill. The termination notice to residential customers shall include written notification to the customer of the existence of local, state and federal programs providing for the payment of utility bills under certain conditions, and of the address and telephone number of the Department for Social Insurance of the Cabinet for Health and Family Services to contact for possible assistance.~~

~~2. Termination notice requirements for water, sewer, or telephone service. Each water, sewer, or telephone utility proposing to terminate customer service for nonpayment shall mail or otherwise deliver to that customer five (5) days' written notice of intent to terminate. Under no circumstances shall service be terminated before twenty (20) days after the mailing date of the original unpaid bill.~~

~~3. The termination notice requirements of this subsection shall not apply if termination notice requirements to a particular customer or customers are otherwise dictated by the terms of a special contract between the utility and customer which has been approved by the commission.~~

~~(g) For illegal use or theft of service. A utility may terminate service to a customer without advance notice if it has evidence that a customer has obtained unauthorized service by illegal use or theft. Within twenty-four (24) hours after such termination, the utility shall send written notification to the customer of the reasons for termination or refusal of service upon which the utility relies, and of the customer's right to challenge the termination by filing a formal complaint with the commission. This right of termination is separate from and in addition to any other legal remedies which the utility may pursue for illegal use or theft of service. The utility shall not be required to restore service until the customer has complied with all tariffed rules of the utility and laws and administrative regulations of the commission.~~

~~(2) A utility shall not terminate service to a customer if the following conditions exist:~~

~~(a) If payment for services is made. If, following receipt of a termination notice for nonpayment but prior to the actual termination of service, there is delivered to the utility office payment of the amount in arrears, service shall not be terminated.~~

~~(b) If a payment agreement is in effect. Service shall not be terminated for nonpayment if the customer and the utility have entered into a partial payment plan in accordance with Section 13 of this administrative regulation and the customer is meeting the requirements of the plan.~~

~~(c) If a medical certificate is presented. Service shall not be terminated for thirty (30) days beyond the termination date if a physician, registered nurse or public health officer certifies in writing that termination of service will aggravate a debilitating illness or infirmity on the affected premises. A utility may refuse to grant consecutive extensions for medical certificates past the original thirty (30) days unless the certificate is accompanied by an agreed~~

~~partial payment plan in accordance with Section 13 of this administrative regulation. A utility shall not require a new deposit from a customer to avoid termination of service for a thirty (30) day period who presents to the utility a medical certificate certified in writing by a physician, registered nurse or public health officer.~~

~~(3) A gas or electric utility shall not terminate service for thirty (30) days beyond the termination date if the Kentucky Cabinet for Human Resources (or its designee) certifies in writing that the customer is eligible for the cabinet's energy assistance program or household income is at or below 130 percent of the poverty level, and the customer presents such certificate to the utility. Customers eligible for such certification from the Cabinet for Human Resources shall have been issued a termination notice between November 1 and March 31. Certificates shall be presented to the utility during the initial ten (10) day termination notice period. As a condition of the thirty (30) day extension, the customer shall exhibit good faith in paying his indebtedness by making a present payment in accordance with his ability to do so. In addition, the customer shall agree to a repayment plan in accordance with Section 13 of this administrative regulation which will permit the customer to become current in the payment of his bill as soon as possible but not later than October 15. A utility shall not require a new deposit from a customer to avoid termination of service for a thirty (30) day period who presents a certificate to the utility certified by the Kentucky Cabinet for Health and Family Services (or its designee) that the customer is eligible for the cabinet's Energy Assistance Program or whose household income is at or below 130 percent of the poverty level.~~

~~Section 15. Winter Hardship Reconnection. (1) Notwithstanding the provisions of Section 13(4) of this administrative regulation to the contrary, an electric or gas utility shall reconnect service to a residential customer who has been disconnected for nonpayment of bills pursuant to Section 14(1)(f) of this administrative regulation prior to application for reconnection, and who applies for such reconnection during the months from November through March if the customer or his agent:~~

~~(a) Presents a certificate of need from the Cabinet for Health and Family Services, Department for Social Insurance, including a certification that a referral for weatherization services has been made in accordance with subsection (3) of this section;~~

~~(b) Pays one-third (1/3) of his outstanding bill or $200, whichever is less; and~~

~~(c) Agrees to a repayment schedule which would permit the customer to become current in the payment of his electric or gas bill as soon as possible but no later than October 15. However, if, at the time of application for reconnection, the customer has an outstanding bill in excess of $600 and agrees to a repayment plan that would pay current charges and makes a good faith reduction in the outstanding bill consistent with his ability to pay, then such plan shall be accepted. In addition to payment of current charges, repayment schedules shall provide an option to the customer to select either one (1) payment of arrearages per month or more than one (1) payment of arrearages per month.~~

~~(d) A utility shall not require a new deposit from a customer whose service is reconnected due to paragraphs (a), (b) or (c) of this subsection.~~

~~(2) Certificate of need for reconnection. Federal and statewide energy assistance programs are administered by the Kentucky Cabinet for Health and Family Services, Department for Social Insurance. A customer who is eligible for energy assistance under the department's guidelines or is certified as being in genuine financial need, which is defined as any household with gross income at or below 130 percent of the poverty level, may obtain a certificate of need from the department to be used in obtaining a service reconnection from the utility.~~

~~(3) Weatherization program. Customers obtaining a certificate of need under this administrative regulation shall agree to accept referral to and utilize weatherization services which are administered by the Cabinet for Health and Family Services. The provision and acceptance of weatherization services is contingent on the availability of funds and other program guidelines. Weatherization services include, but are not limited to, weather stripping, insulation and caulking.~~

~~(4) Customers who are current in their payment plans under subsection 1(c) of this section shall not be disconnected.~~

~~Section 16. Meter Testing. (1) All electric, gas and water utilities furnishing metered service shall provide meter standards and test facilities, as more specifically set out under 807 KAR 5:022, 807 KAR 5:041 and 807 KAR 5:066. Before being installed for use by any customer, all electric, gas and water meters shall be tested and in good working order and shall be adjusted as close to the optimum operating tolerance as possible, as more specifically set out in 807 KAR 5:022, Section 8(3)(a), 807 KAR 5:041, Section 17(1)(a)-(c) and 807 KAR 5:066, Section 15(2)(a)-(b).~~

~~(2) A utility may have all or part of its testing of meters performed by another utility or agency approved by the commission for that purpose. Each utility having tests made by another agency or utility shall notify the commission of those arrangements in detail to include make, type and serial number of standards used to make the checks or tests.~~

~~(3) No utility shall place in service any basic measurement standard required by these rules unless the calibration has been approved by the commission. All utilities or agencies making tests or checks for utility purposes shall notify the commission promptly of the adoption or deletion of any basic standards requiring commission approval of the calibration.~~

~~(4) Each electric, gas and water utility or agency doing meter testing for a utility shall have in its employ meter testers certified by the commission. These certified meter testers shall perform tests as necessary to determine the accuracy of the utility's meters and to adjust the utility's meters to the degree of accuracy required by commission administrative regulations.~~

~~(5) A utility or agency desiring to have its employees certified as meter testers shall submit the names of applicants on the commission's form entitled "Application for Appointment of Meter Testers", and after compliance with the requirements noted in this form, the applicant may be certified as a meter tester and furnished with a card authorizing him to perform meter tests. This form is hereby incorporated by reference, and may be obtained at the commission's offices at 211 Sower Boulevard, Frankfort, Kentucky, on Monday through Friday between the hours of 8 a.m. and 4:30 p.m. local time.~~

~~(6) A utility or agency may employ apprentices in training for certification as meter testers. The apprentice period shall be a minimum of six (6) months, after which the meter tester apprentice shall comply with subsection (5) of this section. All tests performed during this period by an apprentice shall be witnessed by a certified meter tester.~~

~~Section 17. Meter Test Records. (1)(a) A complete record of all meter tests and adjustments and data sufficient to allow checking of test calculations shall be recorded by the meter tester. Such record shall include: Information to identify the unit and its location; date of tests; reason for such tests; readings before and after test; statement of "as found" and "as left" accuracies sufficiently complete to permit checking of calculations employed; notations showing that all required checks have been made; statement of repairs made, if any; identifying number of the meter; type and capacity of the meter; and the meter constant.~~

~~(b) The complete record of tests of each meter shall be continuous for at least two (2) periodic test periods and shall in no case be less than two (2) years.~~

~~(2) Historical records. Each utility shall keep numerically arranged and properly classified records for each meter owned, used and inventoried by the utility. The identification number, date of purchase, name of manufacturer, serial number, type, rating, and name and address of each customer on whose premises the meter has been in service with date of installation and removal shall be included in the records. These records shall also contain condensed information concerning all tests and adjustments including dates and general results of such adjustments. The records shall reflect the date of the last test and indicate the proper date for the next periodic test required by the applicable commission administrative regulation.~~

~~(3) Sealing of meters. Upon completion of adjustment and test of any meter pursuant to commission administrative regulations, the utility shall affix to the meter a suitable seal in such a manner that adjustments or registration of the meter cannot be altered without breaking the seal.~~

~~(4) A utility may store any or all of the meter test and historical data described or required in subsections (1) and (2) of this section in a computer storage and retrieval system upon notification to the commission. If a utility elects to use a computer storage and retrieval system, a back-up copy of the identical information shall be retained.~~

~~Section 18. Request Tests. (1) Each utility shall make a test of any meter upon written request of any customer if the request is not made more frequently than once each twelve (12) months. The customer shall be given the opportunity to be present at the request tests. If the tests show that the meter was not more than two (2) percent fast, the utility may make a reasonable charge for the test. The amount of the charge shall be approved by the commission and set out in the utility's filed tariff.~~

~~(2) After having first obtained a test from the utility, any customer of the utility may request a meter test by the commission upon written application. Such request shall not be made more frequently on one (1) meter than once each twelve (12) months.~~

~~Section 19. Access to Property. The utility shall at all reasonable hours have access to meters, service connections and other property owned by it and located on customer's premises for purposes of installation, maintenance, meter reading, operation, replacement or removal of its property at the time service is to be terminated. Any employee of the utility whose duties require him to enter the customer's premises shall wear a distinguishing uniform or other insignia, identifying him as an employee of the utility, or show a badge or other identification which will identify him as an employee of the utility.~~

~~Section 20. Pole Identification. (1) Each utility owning poles or other structures supporting its wires, shall mark every pole or structure located within a built-up community with the initials or other distinguishing mark by which the owner of every such structure can be readily determined. For the purpose of this rule the term "built-up community" shall mean urban areas and those areas immediately adjacent thereto.~~

~~(2) Identification marks may be of any type but shall be of a permanent material and shall be easily read from the ground at a distance of six (6) feet from the structure.~~

~~(3) If utilities' structures are located outside of a built-up community, at least every tenth structure shall be marked as set forth in subsection (2) of this section.~~

~~(4) All junction structures shall bear the identification mark and structure number of the owner.~~

~~(5) Poles need not be marked if they are clearly and unmistakably identifiable as the property of the utility.~~

~~(6) Each utility shall either number its structures and maintain a numbering system or use some other method of identification so that each structure in the system can be easily identified.~~

~~Section 21. Cable Television Pole Attachments and Conduit Use. (1) Each utility owning poles or other facilities supporting its wires shall permit cable television system operators who have all necessary licenses and permits to attach cables to poles and to use facilities, as customers, for transmission of signals to their patrons.~~

~~(2) The tariffs of the utility shall set forth the rates, terms and conditions under which the utility's facilities may be used.~~

~~(3) With respect to a complaint before the commission in any individual matter concerning cable television pole attachments final action shall be taken on the matter within a reasonable time, but no later than 360 days after filing of the complaint.~~

~~Section 22. System Maps and Records. (1) Each utility shall have on file at its principal office located within the state and shall file upon request with the commission a map or maps of suitable scale of the general territory it serves or holds itself ready to serve showing the following:~~

~~(a) Operating districts.~~

~~(b) Rate districts.~~

~~(c) Communities served.~~

~~(d) Location and size of transmission lines, distribution lines and service connections.~~

~~(e) Location and layout of all principal items of plant.~~

~~(f) Date of construction of all items of plant by year and month.~~

~~(2) In each division or district office there shall be available information relative to the utility's system that will enable the local representative to furnish necessary information regarding the rendering of service to existing and prospective customers.~~

~~(3) In lieu of showing the above information on maps, a card record or other suitable means may be used. For all construction the records shall also show the date of construction by month and year.~~

~~Section 23. Location of Records. All records required by commission administrative regulations shall be kept in the office of the utility and shall be made available to representatives, agents or staff of the commission upon reasonable notice at all reasonable hours.~~

~~Section 24. Safety Program. Each utility shall adopt and execute a safety program, appropriate to the size and type of its operations. At a minimum, the safety program shall:~~

~~(1) Establish a safety manual with written guidelines for safe working practices and procedures to be followed by utility employees.~~

~~(2) Instruct employees in safe methods of performing their work~~

~~(3) Instruct employees who, in the course of their work, are subject to the hazard of electrical shock, asphyxiation or drowning, in accepted methods of artificial respiration.~~

~~Section 25. Inspection of Systems. (1) Each utility shall adopt inspection procedures to assure safe and adequate operation of its facilities and compliance with commission rules and administrative regulations These procedures shall be filed with the commission for review.~~

~~(2) Upon receipt of a report of a potentially hazardous condition at any utility facility made by a qualified employee, public official, or customer, the utility shall inspect all portions of the system which are the subject of the report.~~

~~(3) Appropriate records shall be kept by each utility to identify the inspection made, deficiencies found and action taken to correct the deficiencies.~~

~~(4) Electric utility inspection. Each electric utility shall make systematic inspections of its system in the manner set out below to insure that the commission's safety requirements are being met. These inspections shall be made as often as necessary but not less frequently than is set forth below for various classes of facilities and types of inspection.~~

~~(a) As a part of operating procedure, each utility shall continuously monitor and inspect all production facilities regularly operated and manned.~~

~~(b) At intervals not to exceed six (6) months, the utility shall inspect:~~

~~1. Unmanned production facilities, including peaking units not on standby status, and all monitoring devices, for any evidence of abnormality.~~

~~2. Substations where the primary voltage is sixty-nine (69) KV or greater, for damage to or deterioration of components including structures, fences, gauges monitoring devices.~~

~~3. Underground network transformers and network protectors in vaults located in buildings or under sidewalks, for leaks, condition of case, connections, temperature and overloading.~~

~~4. Electric lines operating at sixty-nine (69) KV or greater, including insulators, conductors, and supporting facilities, for damage or deterioration (c) At intervals not to exceed one (1) year, the utility shall inspect:~~

~~1. Production facilities maintained on a standby status. Except for remotely controlled facilities, all production facilities shall also be thoroughly inspected.~~

~~2. Substations with primary voltage of fifteen (15) to sixty- eight (68) KV.~~

~~(d) At intervals not to exceed two (2) years, the utility shall inspect electric lines operating at voltages of less than sixty-nine (69) KV, including insulators, conductors and supporting facilities.~~

~~(e) The utility shall inspect other facilities as follows.~~

~~1. Utility buildings shall be inspected for compliance with safety codes at least annually.~~

~~2. Construction equipment shall be inspected for defects, wear and operational hazards at least quarterly.~~

~~(f) Aerial inspections shall not be used as the sole basis for evidence of compliance with commission administrative regulations.~~

~~(5) Gas utility inspection. Each gas utility shall make systematic inspections of its system to insure that the commission's safety requirements are being met. These inspections shall be made as often as necessary but not less frequently than is prescribed or recommended by the Department of Transportation, 49 CFR Part 192 Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards, for the various classes of facilities.~~

~~(a) The following maximum time intervals are prescribed for certain inspections provided for in 49 CFR Part 192 Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards, with respect to which intervals are not specified, and for certain additional inspections not provided for in such code.~~

~~1. At intervals not to exceed every fifteen (15) months but at least once each calendar year, the utility shall inspect and visually examine:~~

~~a. Production wells, storage wells, and well equipment, including their exterior components.~~

~~b. Pressure limiting stations, relief devices, pressure regulating stations, and vaults.~~

~~c. Accessibility of the curb box and valve on a service line.~~

~~2. The utility shall inspect other facilities as follows:~~

~~a. Utility buildings shall be inspected for compliance with safety codes at least annually.~~

~~b. Construction equipment under the control of the utility shall be inspected for defects, wear and operational hazards at least quarterly.~~

~~(b) At intervals not to exceed the periodic meter test intervals, individual residential customer service regulators, vents and relief valve vents shall be checked for satisfactory operation.~~

~~(c) At intervals not to exceed the periodic meter test intervals, the curb box and valve on the service line shall be inspected for operable condition.~~

~~(d) Aerial inspections shall not be used as the sole basis for evidence of compliance with commission administrative regulations.~~

~~(6) Water utility inspections. Each water utility shall make systematic inspections of its system in the manner set out below to insure that the commission's safety requirements are being met. These inspections shall be made as often as necessary but not less frequently than is set forth below for various classes of facilities and types of inspection.~~

~~(a) The utility shall annually inspect all structures pertaining to source of supply for their safety and physical and structural integrity, including dams, intakes, and traveling screens. The utility shall semiannually inspect supply wells, their motors and structures, including electric power wiring and controls for proper and safe operation.~~

~~(b) The utility shall annually inspect all structures pertaining to purification for their safety, physical and structural integrity and for leaks, including sedimentation basins, filters, and clear wells; chemical feed equipment; pumping equipment and water storage facilities, including electric power wiring and controls; hydrants, mains, and valves.~~

~~(c) The utility shall monthly inspect construction equipment and vehicles for defects, wear, operational hazards, lubrication, and safety features.~~

~~(7) Telephone utility inspection. Each telephone utility shall make systematic inspections of its system in the manner set out below to insure that the commission's safety requirements are being met. Such inspections shall be made as often as necessary but not less frequently than is set forth below for various classes of facilities and types of inspection.~~

~~(a) The utility shall inspect aerial plant for electrical hazards, proper clearance for electric facilities, and climbing safety every two (2) years.~~

~~(b) The utility shall inspect underground plant for presence of gas, proper clearance from electric facilities and safe working conditions at least annually.~~

~~(c) The utility shall inspect utility-provided station equipment and connections for external electrical hazards, damaged instruments or wiring, appropriate protection from lightning and safe location of equipment and wiring when on a customer's premises.~~

~~(d) The utility shall inspect utility buildings for compliance with safety codes at least annually.~~

~~(e) The utility shall inspect construction equipment for defects, wear and operational hazards at least quarterly.~~

~~(f) Aerial inspections shall not be used as the sole basis for evidence of compliance with commission administrative regulations.~~

~~(8) Sewage utility inspection. Each sewage utility shall make systematic inspections of its system in the manner set out below to insure that the commission's safety requirements are being met. Such inspections shall be made as often as necessary but not less frequently than is set out below for the various types of inspections, or as otherwise required in 807 KAR 5:071.~~

~~(a) The utility shall annually inspect collecting sewers and manholes on a scheduled basis unless conditions warrant more frequent inspections.~~

~~(b) The utility shall weekly inspect all mechanical equipment unless otherwise authorized by the commission.~~

~~Section 26. Reporting of Accidents, Property Damage or Loss of Service. (1) Within two (2) hours following discovery each utility, other than a natural gas utility, shall notify the commission by telephone or electronic mail of any utility related accident which results in:~~

~~(a) Death; or shock or burn requiring medical treatment at a hospital or similar medical facility, or any accident requiring inpatient overnight hospitalization;~~

~~(b) Actual or potential property damage of $25,000 or more; or~~

~~(c) Loss of service for four (4) or more hours to ten (10) percent or 500 or more of the utility's customers, whichever is less.~~

~~(2) A summary written report shall be submitted by the utility to the commission within seven (7) calendar days of the utility related accident.~~

~~(3) Natural gas utilities shall report utility related accidents in accordance with the provisions of 807 KAR 5:027.~~

~~Section 27. Deviations from Administrative Regulation. In special cases, for good cause shown, the commission may permit deviations from this administrative regulation.~~]

DAVID L. ARMSTRONG, Chairman

APPROVED BY AGENCY: July 12, 2012

FILED WITH LRC: July 13, 2012 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2012, at 9:00 a.m., Eastern Daylight Time, at the Public Service Commission's office, 211 Sower Boulevard, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 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 attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2012. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Gerald E. Wuetchers, Executive Advisor/Attorney, Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, phone (502) 564-3940, fax (502) 564-7279.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gerald E. Wuetcher

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes general rules related to the provision of service and furnishing of commodities by electric, gas, water, sewage and telephone utilities.

(b) The necessity of this administrative regulation: This administrative regulation establishes general rules related to the delivery of service and furnishing of commodities by electric, gas, water, sewage and telephone utilities.

(c) How this administrative regulation conforms to the content

of the authorizing statutes: Pursuant to KRS 278.280(2), the commission is required to prescribe rules for the performance of any service or the furnishing of any commodity of the character furnished or supplied by a utility.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently provides guidance as to the general rules of the commission. The amendments to the administrative regulation will clarify issues with the general rules of the commission. The amendments will assist in the effective implementation of the statutes by ensuring that electric utilities undertake regularly scheduled, ground-line inspections of their electrical lines operating at or above 69 kilovolts (KV) and their support structures, including poles, H-frame supports, and lattice tower structures. During the commission's regular inspections it has become aware that not all electric utilities inspect all of their electrical lines and support structures from the ground on a regular inspection cycle. In reliance on the language found in 807 KAR 5:006, Section 25(4)(f), that "aerial inspections shall not be used as the sole basis for evidence of compliance with commission administrative regulations," some utilities have not been doing ground inspections of some of the electrical line circuits on their systems. Instead, those utilities have been performing only aerial inspections of those portions of their systems. Since they are doing ground inspections on the other portions of their systems, they believe that practice conforms to the language of the regulation. The commission believes that the language of the regulation, as written, is somewhat ambiguous as to how often an electric utility must inspect its electric lines and support structures from the ground. However, the commission does not believe the intent of the regulation is to allow utilities to inspect some portions of their systems using aerial inspections only, so long as they do ground inspections of other portions of their systems. The commission's electrical inspectors have demonstrable evidence that a failure to inspect all electrical facilities from the ground on a regular inspection schedule can lead to unsafe conditions in which very large transmission line support structures can be in danger of collapsing from unmanaged vegetation undergrowth. Therefore, the commission is proposing this amendment to 807 KAR 5:006, in order to clarify that all electric lines must be inspected from the ground on a regular schedule.

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

(a) How the amendment will change this existing administrative regulation: The amendments to 807 KAR 5:006 will clarify the documents required to be filed by the utilities with the commission. The amendments will also clarify the accuracy requirements for all types of meters, and clarify the inspection process and when facilities need to be inspected. The amendments also provides that all electric lines operating at 69 KV and above must be inspected from the ground on a regular schedule of: 6 years for those lines supported by wood structures and 12 years for those lines supported by structures made of steel or other materials. Language is also added to include in the inspection process the requirement to review the vegetation management of the system. The amendments also clarify that telephone utilities must inspect their poles and wire attachments for proper clearances of all facilities in general—not just electric facilities as currently worded—and adding review of vegetation management as a specific item to inspect on aerial facilities.

(b) The necessity of the amendment to this administrative regulation: Without adding language to clarify that regular ground inspections must be performed on all electric lines, some electric utilities may continue to utilize only aerial inspections on some portions of their systems. That practice may result in unsafe conditions due to problem issues at the ground level that cannot be properly observed from an airplane or helicopter. The amendments to the telephone utility inspection regulations will provide clarity to the utilities regarding the scope of a proper aerial plant inspection and will ensure that vegetation management practices are properly reviewed during routine inspections.

(c) How the amendment conforms to the content of the authorizing statutes: Pursuant to KRS 278.040(3) the commission is authorized to adopt reasonable regulations to implement the provisions of KRS Chapter 278. Pursuant to KRS 278.280(2), the commission is required to prescribe rules for the performance of any service or the furnishing of any commodity of the character furnished or supplied by the utility. Pursuant to KRS 278.042 the commission is required to ensure that all electric utilities construct and maintain their facilities in accordance with the most recent edition of the NESC. The amended regulation will help ensure that electric utilities are inspecting all of their electric lines and support facilities properly and regularly, which will help ensure that they are providing reliable service to their customers. The amended regulation will also ensure that telephone utilities are properly inspecting their aerial facilities.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation amendment will assist in the effective implementation of the statutes by ensuring that electric utilities undertake regular ground inspection of their electrical lines and their support structures, including poles, H-frame supports, and lattice tower structures and by ensuring that telephone utilities inspect their facilities for proper clearances and proper vegetation management practices. During the commission's regular inspections it has become aware that not all electric utilities inspect all of their electrical lines and support structures from the ground on a regular inspection cycle. Depending on the language found in 807 KAR 5:006, Section 25(4)(f), that "aerial inspections shall not be used as the sole basis for evidence of compliance with commission administrative regulations," some utilities have avoided doing ground inspections of some of the electrical line circuits on their systems. Instead, those utilities have been performing only aerial inspections of those portions of their systems. Since they are doing ground inspections on the other portions of their systems, they believe that conforms to the language of the regulation. The commission believes that the language of the regulation, as written, is somewhat ambiguous as to how often an electric utility must inspect its electric lines and support structures from the ground. However, the commission does not believe the intent of the regulation is to allow utilities to inspect some portions of their systems using aerial inspections only, so long as they do ground inspections of other portions of their systems. The commission's electrical inspectors have demonstrable evidence that a failure to inspect all electrical facilities from the ground on a regular inspection schedule can lead to unsafe conditions in which very large transmission line support structures can be in danger of collapsing from unmanaged vegetation undergrowth. Therefore, the commission is proposing this amendment to 807 KAR 5:006, in order to clarify that all electric lines must be inspected from the ground on a regular schedule.

(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 electric utilities and telephone utilities under the commission's jurisdiction.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The proposed administrative regulation amendment will impact two electric utility companies, which do not currently inspect all of their electric lines operating at or above 69 KV and their support facilities from the ground. Those utilities will have to undertake additional ground-line inspections of their electric lines and support facilities pursuant to the schedule provided in the proposed amendment. All other electric utilities already undertake ground-line inspection of all of their electric lines and support structures using an inspection schedule at least as stringent as the proposed amendment language. Some utilities utilize a more frequent inspection schedule, and it is expected that those utilities will continue to use an inspection schedule that best fits the needs of their systems. The proposed amendment to the regulation will affect all telephone utilities, but the impact is expected to be minimal. Most telephone utilities already look for proper vegetation management and proper clearances of both electrical and non-electrical facilities during their inspections. The amendment will help the commission in its efforts to get the few utilities which do not yet include these items in their inspection practices to do so, in

order to improve reliability.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It is expected that the two electric utilities that do not currently inspect all of their electric lines and support structures from the ground will have to expend some money to add in those ground inspections. However, under the current regulation the commission believes the utilities should already be conducting the ground inspections and the amendment is only clarifying that requirement. Also, the utilities are currently required to inspect their facilities down to the meters. The amendment requiring the utilities to verify the readings on meters using remote read technology is tied to the inspection intervals in which the utilities are already supposed to be inspecting to the meters, therefore it should not add a significant cost to verify the reading is correct or that the display is actually working. It is not expected that the amendments will not have any but a de minimis impact on affected telephone utilities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The utilities will have certainty with regard to what documents to file, accuracy requirements and how they should conduct their system inspections and will be more likely to discover improper meters or unsafe conditions and correct them before they cause injury or outages.

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

(a) Initially: Implementation of the administrative regulation does not involve costs in addition to those already implicated by statutory requirements.

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

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

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

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

(9) TIERING: Is tiering applied? Tiering is not used in this proposed amendment. This amendment applies equally to all electric utilities and telephone utilities, because there is no rational need to provide for different schedules of electrical system inspections for the owner/operators of electric transmission systems and no need for different requirements for the inspection of telephone aerial facilities. The need to conduct ground-line inspections of electric lines and their support facilities and telephone facilities is due to the effects of time, weather, and the environment on those materials, and every utility is required to provide reliable service to its customers. Without conducting regularly scheduled inspections of their electric lines and poles—both from the air and from the ground—electric utilities will not be able to identify potential trouble spots and correct them before they cause outages or injury. Similarly, without inspecting all relevant facility clearances and vegetation management practices on their utility poles, telephone utilities will not be able to identify potential trouble spots and outage causes. Therefore, tiering principles do not apply.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Public Service Commission; Office of Attorney General (Utility Rate and Intervention Division); water districts

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 49 U.S.C. § 60105; KRS 278.040; KRS 278.042; KRS 278.140; KRS 278.160; KRS 278.190; KRS 278.210; KRS 278.220; KRS 278.230; KRS 278.250; KRS 278.255; KRS 278.495; KRS 278.542

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No direct increase in revenue will result from the adoption of the proposed amendment for any governmental agency. The proposed amendment does not provide for the Public Service Commission to assess any fee or charge.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No direct increase in revenue will result from the adoption of the proposed amendment for any governmental agency. The proposed amendment does not provide for the Public Service Commission to assess any fee or charge.

(c) How much will it cost to administer this program for the first year? No increase in the Public Service Commission's costs. The Public Service Commission will be performing the same level of review and require the same number of employees to conduct the review.

(d)How much will it cost to administer this program for subsequent years? No increase in the Public Service Commission's costs. The Public Service Commission will be performing the same level of review and require the same number of employees.

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
Public Service Commission
(Amendment)

807 KAR 5:011. Tariffs.

RELATES TO: KRS[~~Chapter~~] 278.010, 278.030, 278.160, 278.170, 278.180, 278.185, 278.190

STATUTORY AUTHORITY: KRS 278.160(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.160(1) requires[~~provides that~~] the commission to promulgate an administrative regulation to establish requirements for each utility to[~~shall prescribe rules under which each utility shall~~] file schedules showing all rates and conditions established by it and collected or enforced. This administrative regulation establishes requirements for utility tariffs.

Section 1. Definitions. (1) "Commission" is defined by KRS 278.010(15).

(2) "Date of issue" means the date the tariff sheet is signed by the representative of the utility authorized to issue tariffs.

(3) "Nonrecurring charge" means a charge or fee assessed to customers to recover the specific cost of an activity, which:

(a) Is due to a specific request for a certain type of service activity for which, once the activity is completed, additional charges shall not be incurred; and

(b) Is limited to only recover the specific cost of the specific service.

(4) "Person" is defined by KRS 278.010(2).

(5) "Rate" is defined by KRS 278.010(12).

(6) "Sewage utility" means a utility that meets the requirements of KRS 278.010(3)(f).

(7) "Signature" means an original signature or an electronic signature as defined by KRS 369.102(8).

(8) "Statutory notice" means notice made in accordance with KRS 278.180.

(9) "Tariff" means a utility's schedule of each of its rates, charges, tolls, maps, terms, and conditions of service over which the commission has jurisdiction.

(10) "Utility" is defined by KRS 278.010(3).

(11) "Utility's office or place of business" means a location at which the utility regularly employs and stations one (1) or more employees and is open to the public for customer service.

Section 2. General. (1) Beginning January 1, 2013, each tariff sheet and supporting document filed with the commission shall be electronically submitted to the commission using the commission's electronic Tariff Filing System located at https://psc.ky.gov/psc_portal/.

(2) Each utility shall maintain a complete tariff with the commission.

(3) A utility furnishing more than one (1) type of service (water and electricity for example) shall file a separate tariff for each type of service.

(4) A utility shall make available a paper or electronic copy of its current tariff for public inspection in the utility's office or place of business.

(5) A utility that operates a public Web site for its utility operations shall:

(a) Make available on that Web site for public viewing and downloading a copy of its current tariff for each type of service that it provides; or

(b) Place on its Web site a hyperlink to the commission's Web site where the tariff has been posted.

Section 3. Format. (1) A new tariff or revised sheet of an existing tariff filed with the commission shall be:

(a) Printed or typewritten;

(b) Eight and one-half (8 1/2) by eleven (11) inches in size; and

(c) In type no smaller than nine (9) point font, except headers and footers which shall be in type no smaller than eight (8) point font.

(2) Tariff Form-1. The first sheet of a tariff shall be on Tariff Form-1 or reasonable facsimile, shall be used as the tariff's cover page, and shall contain:

(a) The utility's name, mailing address, street address of its principal office, if different from the mailing address, and Web site if applicable;

(b) In the upper right-hand corner, the commission tariff number and, if applicable, the cancelled commission tariff number; (Example: PSC Tariff No. 2, Cancelling PSC Tariff No. 1);

(c) A statement of each type of service offered;

(d) A statement of the area served;

(e) The date of issue and date on which the tariff is to become effective;

(f) The signature of the representative of the utility authorized to issue tariffs; and

(g) The signatory's title or position.

(3) Tariff Form-2. With the exception of the first sheet of the tariff which shall be on Tariff Form-1, all other tariff sheets shall be on Tariff Form-2 or reasonable facsimile and shall contain:

(a) The utility's name and territory served;

(b) In the upper right-hand corner, the commission tariff number and, if applicable, the cancelled commission tariff number; (Example: PSC Tariff No. 2, Cancelling PSC Tariff No. 1);

(c) In the upper right-hand corner, the tariff sheet number and, if applicable, the cancelled tariff sheet number; (Example: First Revised Sheet No. 1, Cancelling Original Sheet No. 1);

(d) The date of issue and date on which the tariff is to become effective;

(e) The signature of the utility representative authorized to issue tariffs;

(f) The signatory's title or position; and

(g) If applicable, a statement that the tariff is "Issued by authority of an Order of the Public Service Commission in Case No. _____ Dated _____, 20____".

(4) Each tariff sheet shall contain a blank space at its bottom right corner that measures at least three and one-half (3.5) inches from the right of the tariff sheet by two and one-half (2.5) inches from the bottom of the tariff sheet to allow space for the commission to affix its stamp.

Section 4. Contents of Schedules. (1) In addition to a clear statement of all rates, each rate schedule shall state the city, town, village or district in which rates are applicable.

(a) If a schedule is applicable in a large number of communities, it shall be accompanied by an accurate index so that each community in which the rates are applicable may be readily ascertained.

(b) A utility may indicate the applicability of a schedule by reference to the index sheet with language indicating "Applicable within the corporate limits of the City of _____," or "see Tariff Sheet No. _____ for applicability."

(2) The following information shall be shown in each rate schedule under the following captions in the order listed:

(a) Applicable: show the territory covered;

(b) Availability of service: show the classes of customers affected, including residential, commercial, and other groups of customers;

(c) Rates: list all rates offered;

(d) Minimum charge: state the amount of the charge, the quantity allowed (if volumetrically based), and if it is subject to a late payment charge;

(e) Late payment charge: state the amount;

(f) Term: if contracts are made for certain periods, give the length of the term; and

(g) Special rules: list any special rules or requirements that are in effect covering this tariff.

(3) Each rate schedule shall state the type or class of service available under the stated rates, by using language similar to "available for residential lighting" or "available for all purposes."

(4) For a tariff in which a number of rate schedules are shown available for various uses, each rate schedule shall be identified either by:

(a) A number in the format "Schedule No. ___"; or

(b) A group of letters, with the designation indicative of the type or class of service for which the rate schedule is available. The format for use of a group of letters shall be in the format "Tariff R.S." indicating that the rate schedule states residential service rates.

(5) A tariff may be further divided into sections.

Section 5. Filing Requirements. (1) Each tariff filing shall include a cover letter and conform to the requirements established in this subsection.

(a) Each document shall be submitted in portable document format ("PDF") and be capable of viewing with Adobe Acrobat Reader.

(b) Each document shall be search-capable and optimized for viewing over the internet.

(c) Each scanned document shall be scanned at a resolution of 300 dots per inch (dpi).

(d) A document may be bookmarked to distinguish different sections of the filing.

(2) A document shall be considered filed with the commission if it has:

(a) Been successfully transmitted using the commission's electronic tariff filing system; and

(b) Met all other requirements specified in this administrative regulation.

Section 6. Tariff Addition, Revision, or Withdrawal. (1) No tariff, tariff sheet, or tariff provision may be changed, cancelled or withdrawn except as provided by Sections 6 and 9 of this administrative regulation.

(2) A new tariff or revised sheet of an existing tariff shall be issued and placed into effect:

(a) By order of the commission; or

(b) By issuing and filing with the commission a new tariff or revised sheet of an existing tariff and providing notice to the public and statutory notice to the commission.

(3) Each revised tariff sheet shall contain one (1) of the following symbols in the margin indicating the change made:

(a) "(D)" to signify deletion;

(b) "(I)" to signify increase;

(c) "(N)" to signify a new rate or requirement;

(d) "(R)" to signify reduction; or

(e) "(T)" to signify a change in text.

Section 7. Tariff Filings Pursuant to Orders. If the commission has ordered a change in the rates or rules of a utility, the utility shall file a new tariff or revised sheet of an existing tariff setting out:

(1) The revised rate, classification, charge, or rule;

(2) The applicable case number;

(3) The date of the commission order; and

(4) The margin symbols required by Section 6(3) of this administrative regulation.

Section 8. Notices. A utility shall give notice to the public as required by this section. (1) Public postings.

(a) A utility shall post at its place of business a copy of the required notice no later than the date the filing is made with the commission. The notice shall not be removed until the filing has become effective; and

(b) A utility that maintains a public Web site shall, within two (2) business days of filing, post a copy of the public notice as well as a hyperlink to its filing on the commission's Web site. The notice shall not be removed until the filing has become effective or the commission issues a final decision on the filing.

(2) Manner of notification.

(a) If the utility has twenty (20) or fewer customers or is a sewage utility, it shall mail written notice in accordance with subsection (3) of this section to each customer no later than the date on which the filing is submitted to the commission.

(b) If the utility has more than twenty (20) customers and is not a sewage utility, it shall:

1. Include notice with customer bills mailed by the date the filing is submitted;

2. Publish notice in a trade publication or newsletter going to all customers by the date the filing is submitted; or

3. Publish notice once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in the utility's service area, the first publication to be made by the date the filing is submitted.

(c) A utility that provides service in more than one (1) county and is not a sewage utility may use a combination of the notice methods listed in paragraph (b) of this subsection.

(3) Notice requirements. Each notice shall contain the following information:

(a) The present rates and proposed rates for each customer class to which the proposed rates will apply;

(b) The amount of the change requested in both dollar amounts and percentage change for each customer classification to which the proposed rate change will apply;

(c) The amount of the average usage and the effect upon the average bill for each customer class to which the proposed rate change will apply;

(d) A statement that the rates contained in this notice are the rates proposed by (name of utility) but that the Public Service Commission may order rates to be charged that differ from the proposed rates contained in this notice;

(e) A statement that any corporation, association, or person may within thirty (30) days after the initial publication or mailing of notice of the proposed rate changes submit a written request to intervene to the Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602 that sets forth the grounds for the request including the status and interest of the party;

(f) A statement that any person may examine this filing and any other documents the utility has filed with the Public Service Commission at the offices of (the name of the utility) located at (the utility's address) and on the utility's Web site at (the utility's Web site address), if the utility maintains a public Web site; and

(g) A statement that this filing and related documents are available on the Public Service Commission's Web site at http://psc.ky.gov/.

(4) Proof of notice. A utility shall file with the commission no later than forty-five (45) days from the date of the initial filing:

(a) If its notice is published in a newspaper of general circulation in the utility's service area, an affidavit from the publisher verifying the notice was published, including the dates of the publication with an attached copy of the published notice;

(b) If its notice is published in a trade publication or newsletter going to all customers, an affidavit from an authorized representative of the utility verifying the trade publication or newsletter was mailed; or

(c) If the notice is mailed, an affidavit from an authorized representative of the utility verifying the notice was mailed.

(5) Compliance by electric utilities with rate schedule information required by 807 KAR 5:051. Notice given pursuant to subsection (2)(a) or (b) of this section shall substitute for the notice required by 807 KAR 5:051, Section 2, if the notice contained a clear and concise explanation of the proposed change in the rate schedule applicable to each customer.

Section 9. Statutory Notice to the Commission. (1) A new tariff or revised sheet of an existing tariff shall become effective on the date stated on the tariff sheet if:

(a) Proper notice was given to the commission and the public; and

(b) The tariff is not suspended by an order of the commission pursuant to KRS 278.190.

(2) All information and notices required by this administrative regulation shall be furnished to the commission at the time of the filing of the proposed rate revision. If the commission determines that there was a substantial omission, which was prejudicial to full consideration by the commission or to an intervenor, the statutory notice to the commission shall not commence to run and shall not be computed until the omitted information and notice is filed.

Section 10. Nonrecurring Charges. Notwithstanding 807 KAR 5:001, a utility may revise a nonrecurring charge pursuant to this section and Sections 6 and 9 of this administrative regulation.

(1) Each requested rate revision shall be accompanied by:

(a) A specific cost justification for the proposed rates;

(b) A copy of the public notice of each requested rate revision and verification that it has been made pursuant to Section 8 of this administrative regulation;

(c) A detailed statement explaining why the proposed changes were not included in the most recent general rate case, and why current conditions prevent deferring the proposed changes until the next general rate case;

(d) A statement identifying the group of potential or existing customers affected by the rate revision; and

(e) A copy of the utility's income statement and balance sheet for a recent twelve (12) month period or an affidavit from an authorized representative of the utility attesting that the utility's income statement and balance sheet are on file with the commission.

(2) The proposed rate shall relate directly to the service performed or action taken and shall yield only enough revenue to pay the expenses incurred in rendering the service.

(3)(a) If the additional revenue to be generated from the proposed rate revision exceeds by five (5) percent the total revenues provided by all nonrecurring charges for a recent twelve (12) month period, the utility shall, in addition to the information set out in subsection (1) of this section, file an absorption test.

(b) The absorption test shall show that the additional net income generated by the tariff filing shall not result in an increase in the rate of return (or other applicable valuation methods) to a level greater than that which was allowed in the most recent general rate case.

(c) As part of the absorption test, any general rate increase received during the twelve (12) month period shall be annualized.

(4) When the utility submits its filing to the commission, it shall transmit by electronic mail an electronic copy in PDF to rateintervention@ag.ky.gov or mail a paper copy to the Attorney General's Office of Rate Intervention, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601-8204.

Section 11. Adoption Notice. (1) A utility shall file an adoption notice on Tariff Form-3 if:

(a) A change of ownership or control of a utility occurs;

(b) A utility or a part of its business is transferred from the operating control of one (1) company to that of another;

(c) A utility's name is changed; or

(d) A receiver or trustee assumes possession and operation of a utility.

(2) Unless otherwise authorized by the commission, the person operating the utility business going forward shall adopt, ratify, and make its own the former operating utility's rates, classifications and requirements on file with the commission and effective at the time of the change of ownership or control.

(3) An adoption notice may be filed and made effective without previous notice.

(4) An adoption notice filed with the commission shall be in consecutive numerical order, beginning with Public Service Commission adoption notice No. 1.

(5) Within ten (10) days after the filing of an adoption notice by a utility that had no tariff on file with the commission, the utility shall issue and file in its own name the tariff of the predecessor utility then in effect and adopted by it, or a tariff it proposes to put into effect in lieu thereof, in the form prescribed in Sections 2 through 4 of this administrative regulation with proper identifying designation.

(6) Within ten (10) days after the filing of an adoption notice by a utility that had other tariffs on file with the commission, the utility shall issue and file one (1) of the following:

(a) A complete reissue of its existing tariff that:

1. Sets out the rates and requirements of the predecessor utility then in effect and adopted by it; or

2. Sets out the rates and requirements it proposes to place into effect for the predecessor utility;

(b) New additional pages or revised current pages of its existing tariffs that:

1. Set out the rates and requirements of the predecessor utility then in effect and adopted by it; or

2. Set out the rates and requirements it proposes to place into effect for the predecessor utility.

(7)(a) If a new tariff or revised sheet of an existing tariff states the rates and requirements of the predecessor utility without change, the tariff or revised sheet of an existing tariff may be filed without notice.

(b) If a new tariff or revised sheet of an existing tariff states any change in the effect of the rates or requirements of the predecessor utility, the new tariff or revised sheet of an existing tariff shall be subject to Sections 9 and 10 of this administrative regulation.

Section 12. Posting Tariffs, Administrative Regulations and Statutes. (1) Each utility shall display a suitable placard, in large type, that states that the utility's tariff and the applicable administrative regulations and statutes are available for public inspection.

(2) Each utility shall provide a suitable table or desk in its office or place of business on which it shall make available for public viewing:

(a) A copy of all effective tariffs and supplements setting out its rates, classifications, charges, rules and requirements, together with forms of contracts and applications applicable to the territory served from that office or place of business;

(b) A copy of the Kentucky Revised Statutes applicable to the utility; and

(c) A copy of the administrative regulations governing the utility.

(3) The information required in subsection (2) of this section shall be made available in an electronic or non-electronic format.

Section 13. Special Contracts. Each utility shall file a copy of all special contracts entered into governing utility service which set out rates, charges or conditions of service not included in its general tariff.

Section 14. Confidential Materials. A utility may request confidential treatment for materials filed pursuant to this administrative regulation in accordance with the procedures established in 807 KAR 5:001, Section 13(3).

Section 15. Deviations from Rules. In special cases, for good cause shown and upon application to and approval by the commission, deviations from the rules in this administrative regulation may be permitted.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Tariff Form-1", July 2012;

(b) "Tariff Form-2", July 2012; and

(c) "Tariff Form-3"; July 2012.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at http://psc.ky.gov/.[~~Section 1. Definitions. For purpose of this administrative regulation: "Commission" means the Public Service Commission.~~

~~Section 2. General. All utilities under the jurisdiction of the commission shall file with the secretary two (2) cover letters and four (4) complete copies of a tariff containing schedules of all its rates, charges, tolls and maps or plats of the area in which it offers service and all its rules and administrative regulations and shall keep a copy of said tariff open to public inspection in its offices and places of business, as required by KRS 278.160, in substantially the form and manner hereinafter set out. If a utility furnishes more than one (1) kind of service (water and electricity for example), a separate tariff must be filed for each kind of service. For the purpose of the commission's rules and administrative regulations, the utility's office or place of business shall be deemed a location at which the utility regularly employs and stations one (1) or more employees and is open to the public.~~

~~Section 3. Form and Size of Tariffs. (1) All tariffs must be printed from type not smaller than six (6) point or typewritten, mimeographed or produced by similar process, on hard calendared paper of good quality.~~

~~(2) The pages of a tariff shall be eight and one-half (8 1/2) by eleven (11) inches in size.~~

~~(3) Utilities shall publish tariffs in loose-leaf form using one (1) side of the paper only, with not more than one (1) schedule to the page.~~

~~(4) The front cover page of a tariff shall contain the following:~~

~~(a) Name of the utility and location of principal office.~~

~~(b) Statement of kind of service offered.~~

~~(c) General statement of territory served.~~

~~(d) Date of issue and date tariff is to become effective.~~

~~(e) Signature of the officer of the utility authorized to issue tariffs.~~

~~(f) Identifying designation in the upper right-hand corner as required by Section 5 of this administrative regulation.~~

~~(5) The second and succeeding pages shall contain:~~

~~(a) All the rules and administrative regulations of the utility.~~

~~(b) Rate schedules showing all rates and charges for the several classes of service.~~

~~(c) Signature of the officer of the utility authorized to issue tariffs.~~

~~(d) Date of issue and date tariff is to become effective.~~

~~(e) Identifying designation in upper right-hand corner as required by Section 5 of this administrative regulation.~~

~~(6) In that portion of the tariff dealing with rates, the desired information shall be shown under the following captions in the order listed:~~

~~(a) Applicable: show territory covered by tariff.~~

~~(b) Availability of service: show classes of customers affected, such as domestic, commercial, etc.~~

~~(c) Rates: list all rates covered by tariff.~~

~~(d) Minimum charge: state amount of charge and quantity allowed.~~

~~(e) Delayed payment charge: state if penalty or discount.~~

~~(f) Term: if contracts are made for certain periods, give length of term.~~

~~(g) Special rules: if any special rules and administrative regulations are in effect covering this tariff, list same hereunder.~~

~~(7) The secretary of the commission will furnish standard forms of tariffs on request.~~

~~Section 4. Contents of Schedules. (1) Each rate schedule in addition to a clear statement of all rates thereunder must state the city, town, village or district in which rates are applicable; provided, however, that schedules applicable in a large number of communi-~~

~~ties must be accompanied by an accurate index by which each community in which the rates are applicable may be readily ascertained, in which case the applicability of a schedule may be indicated by reference to the index sheet. (Example: Applicable within the corporate limits of the City of _____, or see Tariff Sheet No. 2B for applicability.)~~

~~(2) Each rate schedule must state that class of service available under the rates stated therein. (Example: Available for domestic lighting, or available for all purposes, etc.)~~

~~(3) For a tariff in which a number of schedules are shown available for various uses, each schedule shall be identified by a number or by a group of letters, and if by a group of letters, the designation shall be indicative of the class of service for which the schedule is available. (Example: Schedule No. 1 or Tariff D.U.R. indicating that the schedule states domestic utility rates.)~~

~~(4)(a) Each page of the tariff shall bear the Commission Number of the tariff, the date issued and effective, the signature of the issuing officer, and in the upper right-hand corner, a further designation, such as "Original Sheet No. 1," "Original Sheet No. 2," etc.~~

~~(b) In the case of a change in the text of any page as hereinafter provided the further designation shall be "First Revised Sheet No. 1, cancelling Original Sheet No. 1," etc.~~

~~(c) Tariffs may be further divided into sections, and so designated if required by their size and contents.~~

~~(5) All schedules shall state whether a minimum charge is made, and if so, they shall set out all such charges, and further state whether such minimum charge is subject to prompt payment discount or delayed payment penalty.~~

~~Section 5. Designation of Tariffs. All tariffs must bear in the upper right-hand corner of the front cover page the commission number thereof. Subsequent tariffs filed as provided by Sections 6 and 9 of this administrative regulation, must continue such designation in consecutive numerical order. Any subsequent tariff must also show the commission number of the tariff cancelled, changed or modified by it.~~

~~Section 6. Change or Withdrawal of Rate Schedules Administrative Regulations. (1) No tariff, or any provision thereof, may be changed, cancelled or withdrawn except upon such terms and conditions as the commission may impose and in compliance with KRS 278.180 and Sections 6 and 9 of this administrative regulation.~~

~~(2)(a) All revisions in tariff sheets shall contain a symbol in the margin indicating the change made. These symbols are as follows:~~

~~(C) To signify changed administrative regulation.~~

~~(D) To signify discontinued rate, administrative regulation or test.~~

~~(I) To signify increase.~~

~~(N) To signify new rate and/or new test.~~

~~(R) To signify reduction.~~

~~(T) To signify a change in text.~~

~~(b) In the case of a change in the text of any tariff sheet where the rate remains the same, the effective date shall remain the same as that on the amended sheet. The issued date of the change shall be the date the filing is made with the commission.~~

~~(c) All tariff filings which involve the furnishing of equipment or services to the customer by the utility shall be accompanied by a description of the equipment or service involved in the filing and a cost of service study justifying the proposed charges.~~

~~(3) New tariffs stating changes in any provision of any effective tariff may be issued and put into effect by either of the two (2) following methods:~~

~~(a) By order of the commission upon formal application by the utility, and after hearing, as provided by Section 7 of this administrative regulation.~~

~~(b) By issuing and filing on at least twenty (20) days' notice to the commission and the public a complete new tariff (or revised sheet of an existing tariff) stating all the provisions and schedules proposed to become effective as provided by Sections 7 and 9 of this administrative regulation.~~

~~(4) The provisions or rates stated on any sheet or page of a tariff may be modified or changed by the filing of a revision of such sheet or page in accordance with the provisions of this administrative regulation. Such revisions must be identified as required herein.~~

~~Section 7. Adjustment of Rates on Application. Upon the granting of authority for a change in rates, the utility shall file a tariff setting out the rate, classification, charge, or rule and administrative regulation authorized by the commission to become effective the order may direct, and each page of the tariff so filed shall state that it is "Issued by authority of an order of the Public Service Commission in Case No. _____ dated _____, 19___."~~

~~Section 8. Notices. Notices shall be given by the utility in the following manner:~~

~~(1) Advance notice, abbreviated newspaper notice. Utilities with gross revenues greater than $1,000,000 shall notify the commission in writing of Intent to File Rate Application at least four (4) weeks prior to filing. At or about this time application may be made to the commission for permission to use an abbreviated form of newspaper notice of proposed rate increases provided the notice includes a coupon which may be used to obtain a copy from applicant of the full schedule of increases or rate changes.~~

~~(2) Notice to customers of proposed rate changes. If the applicant has twenty (20) or fewer customers, typewritten notice of the proposed rate changes and the estimated amount of increase per customer class shall be placed in the mail to each customer no later than the date on which the application is filed with the commission and, in addition, a sheet shall be posted at its place of business containing such information. Except for sewer utilities which must give a notice by mail to all of their customers pursuant to KRS 278.185, all applicants with more than twenty (20) customers shall post a sheet stating the proposed rates and the estimated amount of increase per customer class at their place of business and, in addition, notice thereof:~~

~~(a) Shall be included with customer billings made on or before the application is filed with the commission; or~~

~~(b) Shall be published by such date in a trade publication or newsletter going to all customers; or~~

~~(c) Shall be published once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in their service area, the first publication to be made prior to the filing of the application with the commission. Each such notice shall contain the following language:~~

~~The rates contained in this notice are the rates proposed by (name of utility). However, the Public Service Commission may order rates to be charged that differ from these proposed rates. Such action may result in rates for consumers other than the rates in this notice.~~

~~(3) Notice as to intervention. The notice made in compliance with subsection (2) of this section shall include a statement to the effect:~~

~~(a) That any corporation, association, body politic or person may by motion within thirty (30) days after publication or mailing of notice of the proposed rate changes request leave to intervene;~~

~~(b) That the motion shall be submitted to the Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, and shall set forth the grounds for the request including the status and interest of the party; and~~

~~(c) That intervenors may obtain copies of the application and testimony by contacting the applicant at a name and address to be stated in the notice. A copy of the application and testimony shall be available for public inspection at the utility's offices.~~

~~(4) Compliance by electric utilities with rate schedule information required by 807 KAR 5:051. If notice is given by subsection (2)(a) or (b) of this section and if the notice contains a clear and concise explanation of the proposed change in the rate schedule applicable to each customer, no notice under Section 2 of 807 KAR 5:051 shall be required. Otherwise, such notice shall be given.~~

~~(5) Notice of hearing. Where notice pursuant to KRS 424.300 is published by the applicant in a newspaper, it shall be published in a newspaper of general circulation in the areas that will be affected one (1) time not less than seven (7) nor more than twenty-one (21) days prior to the hearing giving the purpose, time, place and date of hearing.~~

~~(6) Extensions of time. Applications for extensions of time shall be made to the commission in writing and will be granted only upon~~

~~a showing of compelling reason.~~

~~Section 9. Statutory Notice to the Commission. (1) When a new tariff has been so issued and notice thereof given to the commission and the public in all respects as hereinbefore provided, such tariff will become effective on the date stated therein unless the operation thereof be suspended and the rates and administrative regulations therein be deferred by an order of the commission pending a hearing concerning the propriety of the proposed rates and administrative regulations under KRS 278.190.~~

~~(2) All information and notice required by these rules shall be furnished to the commission at the time of the filing of any proposed revisions in rates or administrative regulations, and the twenty (20) days' statutory notice to the commission will not commence to run and will not be computed until such information and notice is filed if the commission determines that there was a substantial omission, which was prejudicial to full consideration by the commission or to an intervenor.~~

~~Section 10. Nonrecurring Charges. Nonrecurring charges are charges to customers due to a specific request for certain types of service activity for which, when the activity is completed, no additional charges may be incurred. Such charges are intended to be limited in nature and to recover the specific cost of the activity. Nonrecurring charges include reconnection charges, late payment fees, service order changes and hook-on or tap fees. This section allows a utility to seek a rate revision for a nonrecurring charge outside a general rate proceeding. In addition to the specific information required pursuant to the above sections, the following information must be submitted to the commission when a utility makes a filing to increase miscellaneous or nonrecurring service charges outside a general rate case:~~

~~(1) Each requested rate revision must be accompanied by:~~

~~(a) A specific cost justification for the proposed rates and a full description of the equipment or service provided under tariff (807 KAR 5:001, Section 6(2)(c)). The proposed rates should at least cover incremental costs, and a reasonable contribution to overhead. Incremental costs are defined as those costs which would be specifically incurred in the provision of this service.~~

~~(b) A copy of the public notice of each requested rate revision and verification that it has been made pursuant to Section 8 of this administrative regulation. In addition to the notice requirements contained in Section 8 of this administrative regulation, the utility shall also mail a copy of its filing to the Attorney General's Consumer Protection Division. The Attorney General will then have ten (10) days to notify the commission in writing if it requests a hearing in a particular case.~~

~~(c) A detailed statement explaining why the proposed changes could not have been included in the most previous general rate case, and why current conditions prevent deferring the proposed changes until the next general rate request.~~

~~(d) An impact statement identifying the group of customers affected by the proposed tariff. The impact statement shall identify potential as well as existing customers.~~

~~(e) A copy of the utility's income statement and balance sheet for a recent twelve (12) month period.~~

~~(2) If the additional revenue to be generated from the proposed tariff revisions exceeds by five (5) percent the total revenues provided by all miscellaneous and nonrecurring charges for a recent twelve (12) month period, the utility must file, in addition to the information set out in subsection (1)(a) of this section, the following: An absorption test showing that the additional net income generated by the tariff filing will not result in an increase in the rate of return (or other applicable valuation methods) to a level greater than that which was allowed in the most recent rate case. Any general rate increases received during the twelve (12) month period must be annualized. Any significant cost changes may be included but must be documented as part of the filing.~~

~~(3) No more than two (2) such tariff filings under this procedure shall be made between general rate cases. Additional tariff filings for nonrecurring charges will be processed according to general rate case procedures.~~

~~When these requirements are met, such a filing may be made by letter with supporting documentation and will not require the information normally required pursuant to the commission's general rate case administrative regulation, 807 KAR 5:001, Section 9.~~

~~Section 11. Change of Ownership; Adoption notice. (1) In case of change of ownership or control of a utility, or when a utility or a part of its business is transferred from the operating control of one company to that of another, or when its name is changed, the company which will thereafter operate the utility business must use the rates, classifications and administrative regulations of the former operating company (unless authorized to change by the commission), and shall issue, file and post an adoption notice, on a form furnished by the commission, adopting, ratifying and making its own all rates, rules, classifications and administrative regulations of the former operating utility, on file with the commission and effective at the time of such change of ownership or control.~~

~~(2) Adoption notices must likewise be filed by receivers and trustees assuming possession and operation of utilities. Adoption notices may be filed and made effective without previous notice.~~

~~(3) Adoption notices filed with the commission by each utility shall be in consecutive numerical order, beginning with Public Service Commission Adoption notice No. 1.~~

~~(4) Within ten (10) days after the filing of an adoption notice as aforesaid by a public utility which then had no tariffs on file with the commission, said utility shall issue and file in its own name the tariff of the predecessor utility then in effect and adopted by it, or such other tariff as it proposes to put into effect in lieu thereof, in the form prescribed in Sections 2 through 5 of this administrative regulation with proper identifying designation. (Example: Public Service Commission No. 1 cancels Public Service Commission Adoption notice No. 1.)~~

~~(5) Within ten (10) days after the filing of an adoption notice, as required by subsection (2) of this section, by a public utility which then had other tariffs on file with the commission said utility shall issue and file in its own name rate schedules and administrative regulations (on additional or revised sheets to its existing tariff, or by a complete reissue of its existing tariff, or otherwise), which shall set out the rates and administrative regulations of the predecessor utility then in effect and adopted by it, or such other rates and administrative regulations as it proposes to put into effect in lieu thereof, in accordance with the provisions of these rules with proper identifying designation. (Example: First Revision of Original Sheet No. 2A, Public Service Commission, No. 11, cancels Original Sheet No. 2A, also cancels Public Service Commission Adoption notice No. 6; or Public Service Commission No. 12 cancels Public Service Commission No. 11, also cancels Public Service Commission Adoption notice No. 6.)~~

~~(6) When a tariff or revision is issued by a utility in compliance with these rules which states the rates, rules and administrative regulations of the predecessor utility without change in any of the provisions thereof, the same may be filed without notice; but when such tariff or revision states any change in the effect of the rates, rules and administrative regulations of the predecessor utility, such tariff or revision shall be subject to Sections 9 and 10 of this administrative regulation.~~

~~Section 12. Posting Tariffs, Administrative Regulations and Statutes. Every utility shall provide a suitable table or desk in its office and place of business, on which shall be available to the public at all times the following:~~

~~(1) A copy of all effective tariffs and supplements setting out its rates, classifications, charges, rules and administrative regulations, together with forms of contracts and applications applicable to the territory served from that office or place of business.~~

~~(2) Copies of the Kentucky Revised Statutes applicable to the utility.~~

~~(3) A copy of the administrative regulations governing such utility adopted by the commission.~~

~~(4) A suitable placard, in large type, giving information to the public that said tariffs, rules and administrative regulations and statutes are kept there for public inspection.~~

~~Section 13. Special Contracts. Every utility shall file true copies of all special contracts entered into governing utility service which set out rates, charges or conditions of service not included in its general tariff. The provisions of this administrative regulation appli-~~

~~cable to tariffs containing rates, rules and administrative regulations, and general agreements, shall also apply to the rates and schedules set out in said special contracts, so far as practicable.~~

~~Section 14. Deviations from Rules. In special cases, for good cause shown upon application to and approval by, the commission may permit deviations from these rules.~~

~~Section 15. Forms. In submitting to the commission information required by these rules the following forms shall be followed where applicable:~~

~~(1) Form of cover sheet for tariffs.~~
~~(2) Form for filing rules and administrative regulations.~~
~~(3) Form for filing rate schedules.~~
~~(4) Form of certificate of notice to the public of change in tariff where no increase of charges results.~~
~~(5) Form of certificate of notice to the public of change in tariff which results in increased charges.~~
~~(6) Form of adoption notice.~~

~~FORM OF COVER SHEET FOR TARIFFS~~
~~P.S.C. NO. _____~~
~~CANCELS P.S.C. NO. _____~~
~~(NAME OF COMPANY)~~
~~(LOCATION OF COMPANY)~~
~~Rates, Rules and Administrative Regulations for Furnishing~~
~~(SERVICE RENDERED)~~
~~at~~
~~(LOCATION SERVED)~~
~~FILED WITH PUBLIC SERVICE COMMISSION~~
~~OF KENTUCKY~~
~~Issued _____, 19___ Effective _____, 19___~~
~~Issued by: (Name of Utility)~~
~~By:~~

~~FORM FOR FILING RULES &~~
~~ADMINISTRATIVE REGULATIONS~~
~~(Page 2 of Tariff)~~
~~Name of Utility:~~
~~RULES & ADMINISTRATIVE REGULATIONS~~
~~Date of Issue:~~
~~Effective Date:~~
~~Issued by:~~
~~Name:~~
~~Title:~~

~~FORM FOR FILING RATE SCHEDULES~~
~~(Page 3 of Tariff)~~
~~For: (Community, Town or City)~~
~~P.S.C. NO.:~~
~~___(Original) Sheet No._____~~
~~___(Revised)~~
~~Name of Issuing Corporation:~~
~~Cancelling P.S.C. No.:~~
~~___(Original) Sheet No._____~~
~~___(Revised)~~

~~CLASSIFICATION OF SERVICE~~
~~APPLICABLE: (Show territory covered by tariff.)~~
~~AVAILABILITY OF (Show classes of customers affected,~~
~~SERVICE: such as domestic, commercial, etc.)~~
~~RATES: (List all rates covered by tariff.)~~
~~MINIMUM CHARGE: (State if penalty or discount.)~~

~~DATE OF ISSUE: (Month, Day, Year)~~
~~DATE EFFECTIVE: (Month, Day, Year)~~
~~ISSUED BY: (Name of Officer, Title, Address)~~
~~ISSUED BY AUTHORITY OF P.S.C. ORDER NO.:~~

~~FORM OF CERTIFICATE OF NOTICE TO THE~~
~~PUBLIC OF CHANGE IN TARIFF WHERE NO~~
~~INCREASE OF CHARGES RESULTS~~
~~(2 Copies Required)~~

~~To the Public Service Commission, Frankfort, Ky.~~

~~Pursuant to the Rules Governing Tariffs (effective _____), I hereby certify that I am (Title of Officer) _____ of the (Name of Utility) _____ a utility furnishing (Kind of Service) _____ service within the Commonwealth of Kentucky, which on the _____ day of _____, 19___, issued *Tariff P.S.C. No. _____, cancelling Tariff P.S.C. No._____, to become effective _____, 19___, and that notice to the public of the issuing of the same is being given in all respects as required by Section 8 of said administrative regulation, as follows:~~

~~On the _____ day of _____, 19___, the same was exhibited for public inspection at the offices and places of business of the Company in the territory affected thereby, to wit, at the following places: (Give location of offices where rates are posted.) _____ and that the same will be kept open to public inspection at said offices and places of business in conformity with the requirements of Section 8 of said administrative regulation.~~

~~I further certify that the proposed changes in tariff of said utility will not result in an increase in the rates or charges to any customer.~~

~~Given under my hand this _____day of _____, 19___.~~
~~Address:~~
~~*If a revised sheet, or additional sheet of a loose-leaf tariff is used to state changes in rates or administrative regulations, the filing should be described as _____ Revision of Original Sheet No. ____ P.S.C. No. ___, cancelling ____ P.S.C. Adoption notice No. ___.~~

~~FORM OF CERTIFICATE OF NOTICE TO THE~~
~~PUBLIC OF CHANGE IN TARIFF WHICH~~
~~RESULTS IN INCREASED RATES~~
~~(2 Copies Required)~~

~~To the Public Service Commission, Frankfort, Ky.~~

~~Pursuant to the Rules Governing Tariffs (effective _____), I hereby certify that I am (Title of Officer) _____ of the (Name of Utility) _____ a utility furnishing _____ service within the Commonwealth of Kentucky, which on the _____ day of _____, 19___, issued its *Tariff P.S.C. No. _____, cancelling Tariff P.S.C. No. _____ to become effective _____, 19___, and that notice to the public of the issuing of the same is being given in all respects as required by Section 8 of said administrative regulation, as follows:~~

~~*On the _____ day of _____, 19___, the same was exhibited for public inspection at the offices and places of business of the Company in the territory affected thereby, to wit, at the following places: (Give location of offices where rates are posted.) _____ and that the same will be kept open to public inspection at said offices and places of business in conformity with the requirements of Section 8 of said administrative regulation.~~

~~**On the _____ day of _____, 19___, typewritten or printed notice of the proposed rates or administrative regulations was mailed to each of the _____ customers of the company whose rates or charges will be increased thereby, a copy of said notice being attached thereto.~~

~~Given under my hand this _____ day of _____, 19___.~~
~~Address:~~

~~*If a revised sheet or additional sheet of a loose-leaf tariff is used to state changes in rates or administrative regulations, the filing should be described as Revision of Original Sheet No. _____ P.S.C. No. _____, or Original Sheet No. _____ P.S.C. No. _____ cancelling _____ P.S.C. Adoption notice No._____.~~

~~**If Notice is given by publication as provided in Section 8, use the following:~~

~~That more than 20 customers will be affected by said change by way of an increase in their rates or charges, and on the _____ day of _____, 19___, there was delivered to the _____, a newspaper of general circulation in the community in which the customers affected reside, for publication therein once a week for three consecutive weeks prior to the effective date of said change, a notice of the proposed rates or administrative regulations, a copy of said notice being attached hereto. A certificate of the publication of said notice will be furnished the Public Service Commission upon the completion of the same in accordance with Section 9(2), of said administrative regulation.~~

~~FORM OF ADOPTION NOTICE~~
~~P.S.C. Adoption notice No.~~
~~ADOPTION NOTICE~~

~~The undersigned (Name of Utility) _____ of _____ hereby adopts, ratifies, and makes its own, in every respect as if the same had been originally filed and posted by it, all tariffs and supplements containing rates, rules and administrative regulations for furnishing (Nature of Service) _____ service at _____ in the Commonwealth of Kentucky, filed with the Public Service Commission by (Name of Predecessor) _____ of _____, and in effect on the _____ day of _____, 19___, the date on which the public service business of the said (Name of Predecessor) _____ was taken over by it.~~

~~This notice is issued on the _____ day of _____, 19___, in conformity with Section 10 of P.S.C. Tariff administrative regulations adopted by the Public Service Commission.~~

~~By:~~]

DAVID L. ARMSTRONG, Chairman

APPROVED BY AGENCY: July 12, 2012

FILED WITH LRC: July 13, 2012 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2012, at 9:00 a.m., Eastern Daylight Time, at the Public Service Commission's office, 211 Sower Boulevard, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 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 attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2012. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Gerald E. Wuetcher, Executive Advisor/Attorney, Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, phone (502) 564-3940, fax (502) 564-7279.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gerald E. Wuetcher

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the rules and guidelines for a utility to file its tariff or to file revisions to its existing tariff.

(b) The necessity of this administrative regulation: This regulation provides the structural framework for using electronic filing procedures that should reduce filing expenses for a utility as well as allow a utility to submit and receive documents in a timelier manner.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 278.160 provides that the commission shall prescribe rules under which a utility shall file schedules showing all rates and conditions of service it has established and that it collects or enforces.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides a more cost effective and timely means for a utility to submit required documents to the Public Service Commission.

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

(a) How the amendment will change this existing administrative regulation: The current regulation requires a utility to file two (2) cover letters and four (4) complete copies of a new tariff or revisions to an existing tariff. This amendment will eliminate the requirement for the filing of originals and copies in a paper medium. It revises the notice requirements for a rate revision to provide greater flexibility in notifying customers of a rate change. It allows the utility to use electronic medium in lieu of paper documents when providing required information to the public at its place of business. It requires the utility to post notice of proposed rate changes at its website and to advise the public of where electronic copies of rate filings can be obtained at no cost.

(b) The necessity of the amendment to this administrative regulation: This regulation has not been amended in 28 years and currently makes no provision for the use of electronic filing procedures. This amendment will incorporate Public Service Commission practices developed since the regulations last amendment in 1984 and will establish guidelines and procedures for a utility to electronically file tariffs with the Public Service Commission.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 278.160 requires all utilities to file their rate schedules with the Public Service Commission and to charge only rates that are filed with the Public Service Commission. The proposed amendment provides for electronic filing of tariffs which would eliminate certain inefficiencies in the current filing process and reduce transactional costs for utilities.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will benefit both utilities and the Public Service Commission by reducing expenses for paper, printing, and postage as well as eliminate timing inefficiencies caused by postal delays.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The proposed amendment will affect all jurisdictional utilities that are required to file tariffs with the Public Service 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: This amendment will require a utility to have access to a computer, scanner and internet connection. Nearly every utility meets this requirement and those that do not may request a deviation from this regulation to allow it to submit filings in a paper medium.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs to comply. The utilities without means to file tariffs electronically may continue to use the current filing procedures by requesting a deviation from this regulation to allow it to submit filings in a paper medium resulting in costs no greater than what is currently required.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): For a utility that electronically files its tariffs this amendment will reduce the number of documents that must be filed and allows for the use of electronic transmission of documents in lieu of service of paper documents which should result in reduced costs for filing tariffs. The amendment will also provide for a timelier manner for a utility to submit a tariff filing to the Public Service Commission. The proposed amendment generally reflects ad hoc practices with which the Public Service Commission has employed over several years and which it found improved the filing process resulting in a favorable response from utilities.

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

(a) Initially: Implementation of the proposed amendment will not involve additional costs.

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

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

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

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

(9) TIERING: Is tiering applied? No.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Public Service Commission; Office of Attorney General (Utility Rate and Intervention Division); water districts; sewer districts; municipalities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 278.160(1) provides that the commission shall prescribe rules under which each utility shall file schedules showing all rates and conditions established by it and collected or enforced.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No direct increase in revenue will result from the adoption of the proposed amendment for any governmental agency. The proposed amendment does not provide for the Public Service Commission to assess any fee or charge.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No direct increase in revenue will result from the adoption of the proposed amendment for any governmental agency. The proposed amendment does not provide for the Public Service Commission to assess any fee or charge.

(c) How much will it cost to administer this program for the first year? No increase in the Public Service Commission's cost of reviewing new tariffs or revisions to existing tariffs is expected to result from the adoption of the proposed amendment. The Public Service Commission will be performing the same level of review and require the same number of employees to conduct its review. If the proposed amendment is adopted a utility may experience lower expenses when filing tariffs due to the reduced number of required documents. The exact amount of any savings is too difficult to quantify.

(d) How much will it cost to administer this program for subsequent years? No increase in the Public Service Commission's cost of reviewing new tariffs or revisions to existing tariffs is expected to result from the adoption of the proposed amendment. The Public Service Commission will be performing the same level of review and require the same number of employees to conduct its review. If the proposed amendment is adopted a utility may experience lower expenses when filing tariffs due to the reduced number of required documents. The exact amount of any savings is too difficult to quantify.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ENERGY AND ENVIRONMENT CABINET
Public Service Commission
(Amendment)

807 KAR 5:076. Alternative rate adjustment procedure for small utilities.

RELATES TO: KRS 278.010, 278.030, 278.160, 278.180, 278.185, 278.190, 278.310, 278.380

STATUTORY AUTHORITY: KRS 278.040(3), 278.160(1), 278.180, 278.185(4)

NECESSITY, FUNCTION AND CONFORMITY: KRS 278.040(3) authorizes the commission to promulgate administrative regulations to implement KRS Chapter 278. This administrative regulation establishes a simplified and less expensive procedure for small utilities to use to apply to the commission for rate adjustments.

Section 1. Definitions. (1) "Annual Report" means the financial and statistical report that 807 KAR 5:006, Section 4(1)[~~3(1)~~], requires a utility to file with the commission.

(2) "Annual report for the immediate past year" means an annual report that covers the applicant's operations for either:

(a) The calendar year period prior to the year in which the applicant's application for rate adjustment is filed with the commission; or

(b) The most recent calendar year period that 807 KAR 5:006, Section 4(1)[~~3(1)~~], requires the applicant to have on file with the Commission as of the date of the filing of its application for rate adjustment.

(3) "Applicant" means a utility that is applying for an adjustment of rates using the procedure established in this administrative regulation.

(4) "Gross annual revenue" means:

(a) The total revenue that a utility derived during a calendar year; or

(b) If the utility operates two (2) or more divisions that provide different types of utility service, the total amount of revenue derived from the division for which a rate adjustment is sought.

(5) "Sewage utility" means a utility that meets the requirements of KRS 278.010(3)(f).

(6)[~~(4)~~] "Utility" is defined by KRS 278.010(3).[~~"~~]

Section 2. Utilities Permitted to File Application. A utility may apply for an adjustment of rates using the procedure established in this administrative regulation if it:

(1) Had[~~(1) Any utility with $5,000,000 or less~~] gross annual revenue in the immediate past calendar year of $5,000,000 or less;[~~may apply for an adjustment of rates using the procedure established in this administrative regulation.~~]

(2) Maintained[~~The applicant shall have maintained~~] adequate financial records fully separated from any commonly-owned enterprise; and

(3) Filed[~~and shall have on file~~] with the commission fully completed annual reports for the immediate past year and for the two (2) prior years if it[~~the applicant~~] has been in existence that long.

Section 3. The Record upon which Decision Shall Be Made. The commission shall make its decision based on the:

(1) Applicant's annual report for the immediate past year and the annual reports for the two (2) prior years, if the applicant has been in existence that long;

(2) The application required by Section 4 of this administrative regulation;

(3) Information supplied by the applicant in response to requests for information submitted by other parties to the proceeding or the commission;

(4) Written reports submitted by commission staff;

(5) Stipulations and agreements between the parties and commission staff;

(6) Written comments and information that the parties to the proceeding submitted in response to the findings and recommendations contained in any written report that commission staff submitted; and

(7) If a hearing is held, the record of that hearing.

Section 4. Application. (1) An application for alternative rate adjustment shall consist of:

(a) A completed ARF Form-1 that is made under oath and signed by the applicant or an officer who is duly designated by the applicant and who has knowledge of the matters set forth in the application;

(b) A copy of all outstanding evidences of indebtedness, such as mortgage agreements, promissory notes, and bond resolutions;

(c) A copy of the amortization schedule for each outstanding bond issuance, promissory note, and debt instrument;

(d) A depreciation schedule of all utility plant in service;

(e) A copy of the most recent state and federal tax returns of the applicant, if the applicant is required to file returns;

(f) A detailed analysis of the applicant's customers' bills showing revenues from the present and proposed rates for each customer class;

(g) A copy of the notice of the proposed rate change that is provided to customers of the applicant;[~~and~~]

(h) A completed ARF Form-3 for each member of the utility's board of commissioners or board of directors, each person who has an ownership interest of ten (10) percent or more in the utility, and the utility's chief executive officer; and

(i)1. If the applicant is a corporation, a certified copy of its articles of incorporation and all amendments thereto, or a written statement attesting that its articles and all amendments thereto have been filed with the commission in a prior proceeding and referencing the case number of the prior proceeding;

2. If the applicant is a limited liability company, a certified copy of its articles of organization and all amendments thereto, or a written statement attesting that its articles and all amendments thereto have been filed with the commission in a prior proceeding and referencing the case number of the prior proceeding; or

3. If the applicant is a limited partnership, a certified copy of its limited partnership agreement and all amendments thereto, or a written statement attesting that its partnership agreement and all amendments thereto have been filed with the commission in a prior proceeding and referencing the case number of the prior proceeding.

(2) Except as provided in Section 13 of this administrative regulation for electronic filings, the applicant shall:

(a) Submit one (1) original and five (5) paper copies of its application to the executive director of the commission; and

(b) Deliver or mail one (1) paper copy to the Office of Rate Intervention, Office of the Attorney General, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601-8204 or transmit by electronic mail an electronic copy in portable document format to the Office of Rate Intervention at rateintervention@ag.ky.gov.

(3)(a) If the application contains an individual's social security number, taxpayer identification number, birth date, or a financial account number, the applicant shall redact the document so the following information cannot be read:

1. The digits of the Social Security number or taxpayer identification number;

2. The month and day of an individual's birth; and

3. The digits of the financial account number.

(b) To redact the document, the applicant shall replace the identifiers with neutral placeholders or cover the identifiers with an indelible mark, that so obscures the identifiers that they cannot be read.

(4) The application shall not contain any request for relief from the commission other than an adjustment of rates.

(5) A utility[~~An applicant~~] may make written request to the executive director for commission staff assistance in preparing the application.

Section 5. Notice to Customers of Proposed Rate Changes. (1) If the applicant has twenty (20) or fewer customers or is a sewage[~~sewer~~] utility, it shall:

(a) Mail written notice in accordance with[~~as required by~~] subsection (3) of this section to each customer no later than the date on which the application is filed with the commission;

(b) Post at its place of business no later than the filed date of the application a sheet containing the information provided in the written notice to its customers; and

(c) Keep the notice posted until the commission has issued a final decision on the application.

(2) An applicant that has more than twenty (20) customers and is not a sewage[~~sewer~~] utility shall post at its place of business a sheet containing the information required by subsection (3) of this section and shall:

(a) Include notice with customer bills mailed by the date the application is filed; [~~or~~]

(b) Publish notice in a trade publication or newsletter going to all customers by the date the application is filed;

(c) Publish notice once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in the applicant's[~~its~~] service area, the first publication to be made by the date the application is filed; or

(d) If it provides service in more than one (1) county, use a combination of the methods set forth in this subsection.

(3) Each notice shall state[~~contain the following information~~]:

(a) The present rates and proposed rates for each customer class to which the proposed rates will apply;

(b) The amount of the change requested in both dollar amounts and percentage change for each customer classification to which the proposed rate change will apply;[~~(b) The present rates and the proposed rates for each customer class to which the proposed rates will apply;~~]

(c) The amount of the average usage and the effect upon the average bill for each customer class to which the proposed rate change will apply;

(d) That[~~A statement that~~] the rates contained in this notice are the rates proposed by (name of utility) but that the Public Service Commission may order rates to be charged that differ from the proposed rates contained in this notice;

(e) That[~~A statement that~~] any corporation, association, or person [~~with a substantial interest in the matter~~] may, within thirty (30) days after the initial publication or mailing of notice of the proposed rate change, submit a written request to intervene to the Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, setting forth the grounds for the request and including the status and interest of the party; and

(f) That[~~A statement that~~] any person may examine this application at the main offices of (the name of the utility) located at (the utility's address) and on the utility's Web site at (the utility's Web site address), if the utility maintains a public Web site, and

(g) That[~~copies of the application may be obtained at no charge from (the name of the utility) at (the utility's address) and that~~] the application and all documents filed with the Public Service Commission may be viewed and downloaded at the Public Service Commission's Web site at http://psc.ky.gov/.

(4) Proof of notice. An applicant shall file with the commission no later than forty-five (45) days from the filed date of the application:

(a) If its notice is published in a newspaper of general circulation in the applicant's service area, an affidavit from the publisher verifying the notice was published, including the dates of the publication with an attached copy of the published notice; [~~or~~]

(b) If notice is published in a trade publication or newsletter going to all customers, an affidavit from an authorized representative of the utility verifying the trade publication or newsletter was mailed; or

(c) If the notice is mailed, an affidavit from an authorized representative of the utility[~~a written statement signed by the utility's chief executive officer~~] verifying the notice was mailed.

(5) If an applicant maintains a Web site, the applicant shall:

(a) Post on its Web site within seven (7) days of the filed date of the application:

1. A notice containing the information provided in the written notice to its customers; and

2. A hyperlink[~~link~~] to a copy of its application posted on the commission's Web site; and

(b) Keep both items posted until the commission has finally determined the utility's rates.

Section 6. Except as provided in Section 13 of this administra-

tive regulation, an applicant shall not be required to provide the commission with advance notice of its intent to file an application for rate adjustment using the procedure set forth in this administrative regulation.

Section 7. Effective Date of Proposed Rates. (1) An applicant shall not place its proposed rates into effect until the commission has issued an order approving those rates or six (6) months from the date of filing of its application, whichever occurs first.

(2) If the commission has not issued its order within six (6) months from the date of filing of the application, the applicant may place its proposed rates in effect subject to refund upon providing the commission with written notice of its intent to place the rates into effect.

(3) The applicant shall maintain its records in a manner to enable it, or the commission, to determine the amounts to be refunded and to whom is due a refund if the commission orders a refund.[~~.~~]

Section 8. Test Period. The reasonableness of the proposed rates shall be determined using a twelve (12) month historical test period, adjusted for known and measureable changes, that coincides with the reporting period of the applicant's annual report for the immediate past year.

Section 9. Discovery. (1) The minimum discovery available to intervening parties shall be as prescribed by this subsection.

(a) A party in the proceeding may serve written requests for information upon the applicant within twenty-one (21) days of an order permitting that party to intervene in the proceeding.

(b) At the time of serving its requests upon the applicant, the party shall file a copy of its requests with the commission and serve a copy upon all other parties.

(c) Within twenty-one (21) days of service of timely requests for information from a party, the applicant shall serve its written responses upon each party and shall file with the commission one (1) original and five (5) copies.

(2) The commission may establish different arrangements for discovery if it finds different arrangements are necessary to evaluate an application or to protect a party's rights to due process.

Section 10. Commission Staff Report. (1) Within thirty (30) days of the date that an application is accepted for filing, the commission shall enter an order advising the parties whether commission staff will prepare a report on the application.

(2) If a commission staff report is prepared, the:

(a) Commission staff shall:

1. File the report with the commission; and

2. Serve a copy of the report on all parties of record; and

(b) Report shall contain the commission staff's findings and recommendations regarding the proposed rates.

(3) (a) Each party shall file with the commission a written response to the commission staff report within fourteen (14) days of the filing of the report.

(b) This written response shall contain:

1. All objections to and other comments on the findings and recommendations of commission staff;

2. Any request for hearing or informal conference;[~~and~~]

3. The reasons why a hearing or informal conference is necessary; and

4. If commission staff reports that the applicant's financial condition supports a higher rate than the applicant proposed or recommends the assessment of an additional rate or charge not proposed in the application, the filing party's position on whether the commission should authorize the assessment of the higher rate or the recommended additional rate or charge.

(c) If a party in its written response fails to object to a finding or recommendation contained in the commission staff report, it shall be deemed to have waived any objections to that finding or recommendation. A party's failure to request a hearing or informal conference in its written response shall be deemed a waiver of any right to a hearing on the application and a request that the case stand submitted for decision.

(d) If a party fails to file a written response with the commission within this time period, it shall be deemed to have waived any objections to the findings and recommendations contained in the report and any right to a hearing on the application.

(e) Acceptance of the findings and recommendations contained in the commission staff report by all parties in a proceeding shall not preclude the commission from conducting a hearing on the application, taking evidence on the applicant's financial operations, or ordering rates that differ from or conflict with the findings and recommendations set forth in the commission staff report.

(f) If commission staff reports that the applicant's financial condition supports a higher rate than the applicant proposed or recommends the assessment of an additional rate or charge not proposed in the application, the commission may order the applicant to provide notice of the finding or recommendation to its customers.

Section 11. Notice of Hearing. (1) If the commission orders a hearing, the applicant shall publish in a newspaper or mail to its customers notice of the hearing.

(2) The notice shall state the purpose, time, place, and date of the hearing.

(3) Newspaper notice shall be published once in a newspaper of general circulation in the applicant's service area no fewer than seven (7) and no more than twenty-one (21) days prior to the hearing.

(4) Mailed notices shall be mailed at least fourteen (14) days prior to the date of the hearing.

Section 12. Utility Personnel Participation in Commission Proceedings. (1) An authorized official or employee of the applicant who is not licensed to practice law in Kentucky may, on behalf of an applicant that is a water district, corporation, partnership, or limited liability company, file the application, responses to commission orders and requests for information, as well as appear at conferences related to the application.

(2) Any applicant that is a water district, corporation, partnership, or limited liability company shall, at any hearing conducted on the application, be represented by an attorney who is authorized to practice law in Kentucky.

Section 13. Use of Electronic Filing Procedures in lieu of Submission of Paper Documents. (1) Upon an applicant's timely election of the use of electronic filing procedures, the procedures established in this section shall be used in lieu of other filing procedures set forth in this administrative regulation[~~An applicant may elect to use electronic filing procedures in lieu of submission of paper documents to the commission~~].

(2) At least seven (7) days prior to the submission of its application, an applicant shall:

(a) File with the commission written notice of its election using the ARF Form-2; and

(b) If it does not have an account for electronic filing with the Commission, register for an account at http://psc.ky.gov/Account/Register.

(3)[~~Upon electing the use of electronic filing procedures, the procedures established in this section shall be followed in the commission proceeding on the application. (4)~~] All pleadings, documents, and exhibits shall be filed with the commission by uploading an electronic version of the document using the commission's E-Filing System at http://psc.ky.gov. In addition, the filing party shall file the[~~one (1)~~] original[~~and one (1) paper copy~~] with the commission as required by subsection (11)[~~(12)~~] of this section.

(4)[~~(5)~~] Each file in an electronic submission shall be:

(a) In portable document format;

(b) Search-capable;

(c) Optimized for viewing over the Internet;

(d) Bookmarked to distinguish sections of the pleading or document; and

(e) If a scanned document, scanned at a resolution of no less than 300 dots per inch.

(5)[~~(6)~~](a) All electronic submissions shall include an introductory file in portable document format that is named "Read1st" and that contains:

1. A general description of the filing;

2. A list of all materials not included in the electronic filing; and

3. A statement attesting that the electronically filed documents are a true representation of the original documents.

(b) The "Read1st" file and any other document that normally contains a signature shall contain a signature in the electronically submitted document.

(c) The electronic version of the cover letter accompanying the paper filing may be substituted for a general description.

(d) If the electronic submission does not include all documents contained in the paper version (e.g., confidential materials, materials that are too large or bulky to transfer by electronic medium), the absence of these documents shall be noted in the "Read1st" document.

(6)[~~(7)~~](a) An electronic transmission or uploading session shall not exceed twenty (20) files.

(b) An individual file shall not exceed fifty (50) megabytes.

(c) If a filing party's submission exceeds the limitations established in paragraph (a) or (b) of this subsection, the filing party[~~filer~~] shall make its electronic submission in two (2) or more consecutive electronic transmission or uploading sessions.

(7)[~~(8)~~] If filing any document with the commission, the filing party shall certify that:

(a) The electronic version of the filing is a true and accurate copy of each document filed in paper medium;

(b) The electronic version of the filing has been transmitted to the commission; and

(c) A copy of the filing in paper medium has been mailed to all parties that the commission has excused from participation by electronic means.

(8)[~~(9)~~](a) Upon completion of a party's uploading of an electronic submission, the commission shall cause an electronic mail message to be sent to all parties of record advising that an electronic submission has been made to the commission.

(b) Upon a party's receipt of this message, it shall be the receiving party's responsibility to access the commission's electronic file depository at http://psc.ky.gov and view or download a copy of the submission.

(9)[~~(10)~~] Unless it states its objection to the use of electronic filing procedures in its motion for intervention, a party granted leave to intervene shall:

(a) Be deemed to have consented to the use of electronic filing procedures and the service of all documents and pleadings, including orders of the commission, by electronic means; and

(b) File with the commission within seven (7) days of the date of an order of the commission granting its intervention a written statement that:

1. It waives any right to service of commission orders by United States mail; and

2. It, or its authorized agent, possesses the facilities to receive electronic transmissions.

(10)[~~(11)~~] If a party objects to the use of electronic filing procedures and the commission determines that good cause exists to excuse that party from the use of electronic filing procedures, service of documents on that party and by that party shall be made in accordance with 807 KAR 5:001, Section 4(8).

(11)[~~(12)~~](a) A document shall be considered timely filed with the commission if:

1. It has been successfully transmitted in electronic medium to the commission within the time allowed for filing and meets all other requirements imposed by this administrative regulation and any order of the commission; and

2.[~~(b)~~] The original document, in paper medium, is[~~shall be~~] filed at the commission's offices no later than the second business day following the electronic filing.

(b)[~~(c)~~] Parties shall attach to the top of the paper submission a paper copy of the electronic mail message from the commission confirming transmission and receipt of its electronic submission.

(12) Except as expressly provided in this section, a party making a filing in accordance with the procedures set forth in this section shall not be required to comply with any provision of this administrative regulation that requires service of any document or material filed with the commission on other parties in the case.

Section 14. The provisions of 807 KAR 5:001, Sections 1 through 6, 9, 10, 11, and 13[~~5 and 7~~], shall apply to commission proceedings involving applications filed pursuant to this administrative regulation.

Section 15. Upon a showing of good cause, the commission may permit deviations from this administrative regulation. Requests for deviation shall be submitted in writing by letter to the commission.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "ARF Form-1", September 2011; [~~and~~]

(b) "ARF Form-2", September 2011; and

(c) "ARF Form-3", July 2012.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law at the commission's offices at 211 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at http://psc.ky.gov/.

DAVID L. ARMSTRONG, Chairman

APPROVED BY AGENCY: July 12, 2012

FILED WITH LRC: July 13, 2012 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2012, at 9:00 a.m., Eastern Daylight Time, at the Public Service Commission's office, 211 Sower Boulevard, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 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 attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2012. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Gerald E. Wuetcher, Executive Advisor/Attorney, Public Service Commission, 211 Sower Boulevard, P. O. Box 615, Frankfort, Kentucky 40602, phone (502) 564-3940, fax (502) 564-7279.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gerald E. Wuetcher

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides a simplified and less expensive procedure by which small utilities may apply to the commission for rate increases. A small utility may apply for rate adjustments using the formal procedure outlined in 807 KAR 5:001 or by using the procedure prescribed in this administrative regulation, which is intended to minimize the need for formal hearings, to reduce filing requirements, and to shorten the time period between application and commission order.

(b) The necessity of this administrative regulation: This regulation will assist the Public Service Commission in timely reviewing applications for rate adjustment, will reduce the expense of rate case proceedings, and is necessary to the Public Service Commission's authority to regulate the rates of small utilities. It provides a structural framework for using electronic filing procedures for small utility rate cases.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 278.030 permits utilities to demand and collect fair, just, and reasonable rates for services. KRS 278.040 confers exclusive jurisdiction on the Public Service Commission to regulate the rates and services of all utilities. KRS 278.160 requires all utilities to file their rate schedules with the Public Service Commission and to charge only rates that are filed with the Public Service Commission. KRS 278.180 -.192 provides a framework for utility rate adjustments. 807 KAR 5:076 permits a simplified and relatively inexpensive means for smaller utilities to

obtain Public Service Commission approval of such adjustments and thus charge fair, just, and reasonable rates that reflect the actual cost of service.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides a more cost effective and simplified means for small utilities to apply for rate adjustments. It provides clear guidance to small utilities on the documents necessary for a rate adjustment and simplifies the procedures necessary for a rate adjustment.

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

(a) How the amendment will change this existing administrative regulation: It amends the regulation to reflect changes in the Commission's Rules of Procedure (807 KAR 5:001), including those regarding publication of notice to customers and the use of electronic filing procedures. It reduces the number of copies that a party must file with the Commission when electronic filing procedures are used to an original. It requires the utility to submit with its application statements from its chief executive officer, any person who has an ownership interest of 10 percent or more in the utility, and each director or commissioner of the utility a statement of related transactions. It clarifies that the procedure that will be followed upon the issuance of Commission Staff Report on a utility's rate application.

(b) The necessity of the amendment to this administrative regulation: The amendment addresses technical issues arising from the amendment of 807 KAR 5:076 in 2011 and from the proposed amendment of 807 KAR 5:001 and 807 KAR 5:011. The amendment is necessary to correct drafting errors in the 2011 amendment and to reflect changes brought by the proposed amendment of 807 KAR 5:001 and 807 KAR 5:011. The amendment is also intended to increase the effectiveness and speed of Commission review of rate applications by identifying all potential related transactions between utility officials and the utility at the outset of the rate proceeding. It should reduce discovery necessary for the production of a Commission Staff Report and thus the length of time necessary to prepare such a report.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 278.030 permits utilities to demand and collect fair, just, and reasonable rates for services. KRS 278.040 confers exclusive jurisdiction on the Public Service Commission to regulate the rates and services of all utilities. KRS 278.160 requires all utilities to file their rate schedules with the Public Service Commission and to charge only rates that are filed with the Public Service Commission. KRS 278.180 -.192 provides a framework for utility rate adjustments. 807 KAR 5:076 permits a simplified and relatively inexpensive means for smaller utilities to obtain Public Service Commission approval of such adjustments and thus charge fair, just, and reasonable rates that reflect the actual cost of service. The proposed amendment eliminates inefficiencies in the rate adjustment process and reduces transactional costs for small utilities that are less able to afford large rate case expenses and that have less expertise in the ratemaking process than larger utilities.

(d) How the amendment will assist in the effective administration of the statutes: The amendment seeks to reduce confusion among utilities and intervenors regarding electronic filing procedures and notice requirements by conforming those procedures to those in the Commission's Rules of Procedure. It ensures that requirements for electronic filing and notice are the same regardless of the filing procedure used. It will increase the effectiveness and speed of Commission review of rate applications by identifying all potential related transactions between utility officials and the utility at the outset of the rate proceeding. It should reduce discovery necessary for the production of a Commission Staff Report and thus the length of time necessary to prepare such a report and the final entry of a Commission Order. It clarifies the procedures to be followed after the issuance of a Commission Staff Report and therefore should reduce litigation, speed the review process, and shorten the delay before the issuance of a final decision.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The proposed amendment will affect 240 water, natural gas, and sewer utilities whose annual gross revenues are $5 million or less and their customers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is necessary. The affected utilities may continue to use the rate filing procedures set forth in 807 KAR 5:001 in lieu of the alternative rate filing procedures. The amended regulation requires any applicant for a rate adjustment to disclose all business transactions that its managers, directors, commissioners, owners, or their close relations have with the utility. The applicant makes this disclosure by completing a schedule that is part of the application form.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs to comply. The affected utilities may continue to use the rate filing procedures set forth in 807 KAR 5:001 in lieu of the alternative rate filing procedures. Because the amendment will reduce the number of documents that must be filed and allows for the use of electronic transmission of documents in lieu of service of paper documents, the amendment should reduce the cost of filing an application for rate adjustment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The proposed Amendment will reduce the time necessary for review of rate case applications and the cost of rate case proceedings and thus lessen or reduce the level of requested rate adjustments. It should enhance public awareness of utility rate adjustment applications made by small utilities. It provides greater certainty and stability in the ratemaking process that the Public Service Commission uses for small utilities.

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

(a) Initially: Implementation of the proposed amendment will not involve additional costs.

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

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

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

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

(9) TIERING: Is tiering applied? To the extent that the regulation establishes simplified procedures for utilities with annual revenues of less than $5,000,000, tiering has been applied. The Public Service Commission believes that tiering is appropriate because the operations of smaller utilities are less complex, their recordkeeping practices are simpler, and the amount of documentary evidence to verify their financial operations is less than that of larger utilities. Moreover, given the smaller number of customers over which small utilities must spread rate case expense, the use of the same procedures as used for larger utilities will result in larger rate increases for smaller utilities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Public Service Commission; Office of Attorney General (Utility Rate and Intervention Division); water districts

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 278.030 permits utilities to demand and collect fair, just, and reasonable rates for services. KRS 278.040 confers exclusive jurisdiction on the Public Service Commission to regulate the rates and services of all utilities. KRS 278.160 requires all utilities to file their rate schedules with the Public Service Commission and to charge only rates that are filed with the Public Service Commission. KRS 278.180 -.192 provides a framework for utility

rate adjustments. 807 KAR 5:076 permits a simplified and relatively inexpensive means for smaller utilities to obtain Public Service Commission approval of such adjustments and thus charge fair, just, and reasonable rates that reflect the actual cost of service.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No direct increase in revenue will result from the adoption of the proposed amendment for any governmental agency. The proposed amendment does not provide for the Public Service Commission to assess any fee or charge. While the proposed amendment may allow for water districts to more easily obtain rate adjustments, water districts would have been able to obtain same level of rate adjustment if the proposed amendment is not enacted.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No direct increase in revenue will result from the adoption of the proposed amendment for any governmental agency. The proposed amendment does not provide for the Public Service Commission to assess any fee or charge. While the proposed amendment may allow for water districts to more easily obtain rate adjustments, water districts would have been able to obtain same level of rate adjustment if the proposed amendment is not enacted.

(c) How much will it cost to administer this program for the first year? No increase in the Public Service Commission's cost of reviewing applications for rate adjustment or otherwise regulate small public utilities is expected to result from the adoption of the proposed amendment. The Public Service Commission will be performing the same level of review and require the same number of employees to conduct its review. Water districts that are currently ineligible to use the procedures in 807 KAR 5:076 but that will be eligible if the proposed amendment is adopted will experience lower rate case expenses when filing for rate adjustments as they will file fewer documents with their application and may be able to avoid the need to retain rate case consultants and other professionals to prepare and support their application. The exact amount of any savings is too difficult to quantify.

(d) How much will it cost to administer this program for subsequent years? No increase in the Public Service Commission's cost of reviewing applications for rate adjustment or otherwise regulate small public utilities is expected to result from the adoption of the proposed amendment. The Public Service Commission will be performing the same level of review and require the same number of employees to conduct its review. Water districts that are currently ineligible to use the procedures in 807 KAR 5:076 but that will be eligible if the proposed amendment is adopted will experience lower rate case expenses when filing for rate adjustments as they will file fewer documents with their application and may be able to avoid the need to retain rate case consultants and other professionals to prepare and support their application. The exact amount of any savings is too difficult to quantify.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET
Department of Housing, Buildings, and Construction
Division of Plumbing
(Amendment)

815 KAR 20:034. Requirements for approval of continuing education courses and providers.

RELATES TO: KRS 318.054, 318.130

STATUTORY AUTHORITY: KRS 318.130, 318.054

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.054 authorizes the department, after review by the State Plumbing Code Committee, to adopt continuing education requirements for plumbers. This administrative regulation establishes the process by which providers of continuing education courses are approved and registered with the department and continuing education courses approved.

Section 1. Requirements for Continuing Education Providers. (1) Continuing education providers shall either be a:

(a) Trade association with affiliation to the plumbing trade;

(b) Trade school;

(c) College;

(d) Technical school;

(e) Business dedicated solely to providing continuing education and that provides at least one (1) course quarterly within each congressional district;

(f) Plumbing contracting company that employs full-time training personnel to conduct continuing education programs providing continuing education for journeymen only; or

(g) Plumbing manufacturer or distributor that employs full-time training personnel to conduct continuing education programs providing continuing education for journeymen only.

(2) Provider Registration. The department shall maintain a list of approved continuing education course providers. An approved provider shall meet the criteria established in Section 2 of this administrative regulation.

(3) Each continuing education course provider shall register with the department as required by subsection (3) of this section before submitting course materials for department approval. Registration shall be valid for two (2) years from the date of issuance.

(4) Course providers shall register on Form PLB-3 provided by the department and shall include the following:

(a) The company name, mailing address, email address, telephone, and fax numbers of the provider;

(b) Contact person; and

(c) The fee, if any, to be charged to participants.

(5) Each course provider shall report to the department any change to the information submitted in the initial application within thirty (30) days after the change takes effect.

(6) For each course approved the provider shall distribute to each applicant in attendance a questionnaire for the purpose of rating the course.

(a) Questionnaires shall include:

1. Name of the course;

2. Date the course was taken;

3. Questions ranking the quality of the course;

4. Questions ranking the quality of the course materials provided; and

5. Questions ranking the quality of the instructor.

(b) Completed questionnaires shall be submitted with license renewal applications.

Section 2. Continuing Education Course Approval. (1) A separate application for approval shall be submitted to the department on Form PLB-4 provided by the department for each course offered by a course provider.

(2) An application for approval of a continuing education course shall be submitted only by approved providers registered with the department. Applications shall be submitted at least thirty (30)[~~sixty (60)~~] days prior to the course offering.

(3) A continuing education course shall provide instruction in at least one of the subject areas specified in Section 3 of this administrative regulation.

(4) The course application shall include the following:

(a) A course syllabus;

(b) Name of the course;

(c) Name and registration number of the provider;

(d) Name of the instructor or presenter along with his or her qualifications;

(e) The amount of actual time needed to present the course;

(f) The objectives of the course; and

(g) A statement of the practicality of the course to the plumbing trade.

(5) Content changes made to the course shall require subsequent submission to the department for review and approval.

(6) Course approval shall be valid for two (2) years from the date approved by the department.

(7) The office shall issue a course number for each approved course. The course number and the provider's number shall appear on all advertisements and certificates for the course.

(8) Providers shall submit to the department a quarterly schedule including date and locations of courses by January 1, April 1, July 1, and October 1 annually and the department shall be notified at least thirty (30) days prior to a course's offering of changes made to scheduled courses.

(9) Providers may submit additional courses to their quarterly schedule if done at least thirty (30) days prior to the course offerings.

(10) The department shall receive written notification of scheduling changes at least ten (10) working days prior to the originally scheduled course date by fax or e-mail to the Director of Plumbing.

(11)[~~(10)~~] Cancellations.

(a) The provider shall give notice of cancellation no less than five (5) working days prior to a scheduled class unless the Governor declares a state of emergency or other conditions exist that would preclude a five (5) day notification of cancellation;

(b) If the scheduled class is canceled, providers shall, at the option of the registrant, issue a full refund or allow the registrant to attend a rescheduled course;

(c) A registrant who notifies a provider of cancellation prior to five (5) working days of a scheduled course may choose either a full refund or to attend a subsequent course; and

(d) Providers shall not cancel a course with ten (10) or more registrants, unless cancellation is the result of an emergency.

Section 3. Continuing Education Course Content. (1) All courses shall contain information beneficial in the day-to-day operation of a plumbing business.

(2) Courses relating to business shall include one (1) or more of the following:

(a) Business law;

(b) Accounting practices; or

(c) Insurance.

(3) Courses relating to job safety shall directly relate to the construction trade.

(4) Courses related to the Kentucky state plumbing code shall include one (1) or more of the following:

(a) KRS Chapter 318;

(b) Basic plumbing principles;

(c) 815 KAR 20:001 through 815 KAR 20:195;

(d) Kentucky Building Code; or

(e) Kentucky Residential Code.

(5) Providers requesting approval of courses for topics not listed in this section shall demonstrate the relevancy of the topic to the plumbing trade.

Section 4. Continuing Education Course Records. (1) Each registered course provider shall establish and maintain for three (3) years the following records for each approved course:

(a) Certificates of completion as provided in subsection (2) of this section;

(b) An attendance sign-in and sign-out sheet; and

(c) A course syllabus.

(2) Certificates of completion.

(a) Each registered course provider shall issue a certificate of completion for each participant who enrolled and completed an approved continuing education course.

(b) Certificates of completion shall contain the following information about the individual participant:

1. Name;
2. Address;
3. License number or numbers;
4. Date of attendance; and
5. Course or courses completed.

(c) One (1) copy of each certificate of completion shall be:

1. Sent to the department electronically;
2. Retained on file by the provider in compliance with subsection (1) of this section; and
3. Given to the participant upon completion of the course.

Section 5. Course Audits. (1) Records requested in writing by the department shall be delivered to the department within ten (10) days of the requesting date.

(2) Representatives of the department may, at any time, attend an approved continuing education course to ensure that the course meets the stated objectives and that applicable requirements are being met.

Section 6. Disciplinary Action. The department may deny, suspend, or revoke approval of any course provider or may issue a fine to any course provider who:

(1) Obtains or attempts to obtain registration or course approval through fraud, false statements, or misrepresentation;

(2) Does not provide complete and accurate information in either the initial registration or in any notification of changes to the information;

(3) Advertises a course as being approved by the department before the approval is received; or

(4) Fails to comply with the requirements of this administrative regulation.

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

(a) Form PLB-3, "Application for Approval as a Plumbing Continuing Education Course Provider", November 2010; and

(b) Form PLB-4, "Application for a Plumbing Continuing Education Course Approval", November 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, Division of Plumbing, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

AMBROSE WILSON IV, Commissioner
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: July 11, 2012

FILED WITH LRC: July 11, 2012 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2012 at 10:00 a.m., EST, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 15, 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 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 August 31, 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 502-573-0365, Ext. 144, fax 502-573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dawn M. Bellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for approval of Plumbing continuing education courses and continuing education providers.

(b) The necessity of this administrative regulation: KRS 318.054 authorizes the department, after review by the State Plumbing Code committee, to adopt continuing education require-

ments for plumbers. KRS 318.130 authorizes the department to adopt any other reasonable regulation to administer the Plumbing chapter.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the requirements for approval as a Plumbing continuing education course provider and the requirements for approval of Plumbing continuing education courses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation sets forth the requirements for continuing education providers and continuing education classes to gain approval as authorized by KRS 318.054 and 3418.130.

(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 give continuing education providers flexibility to better serve license holders by providing education on timely issues/changes regarding plumbing installations, inspections and permitting within the Commonwealth.

(b) The necessity of the amendment to this administrative regulation: Updating requirements for continuing education providers will better serve the constituents of the Commonwealth and ensure the continuing education on the most timely of technological, regulatory and statutory information relating to plumbing.

(c) How the amendment conforms to the content of the authorizing statutes: Pursuant to KRS 318.130, the department may adopt regulations to administer the State Plumbing code and licensing if reviewed and recommended by the Plumbing Code Committee. The committee reviewed and recommended these amendments at the February 21, 2012 meeting.

(d) How the amendment will assist in the effective administration of the statutes: With the recommended amendments, continuing education classes can be offered which educate on the most up to date plumbing issues facing licensees in the Commonwealth.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Housing, Buildings and Construction, Division of Plumbing and Plumbing continuing education providers, plumbing licensees.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation: Plumbing continuing education providers shall submit an application for approval as a provider and for each course to be administered by the provider. Additionally, the advanced notice for amending class schedules for Plumbing continuing education courses is lessened thereby affording increased flexibility for providers to offer courses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment results in no additional or new costs to Plumbing continuing education course providers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits include increased flexibility in scheduling Plumbing continuing education courses which will be accepted towards annual continuing education requirements necessary for license renewal.

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

(a) Initially: There are no additional or new costs associated with the implementation of this amended administrative regulation.

(b) On a continuing basis: There are no additional or new costs associated with implementation of this amended administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing Plumbing funds will be utilized for the administration of approving Plumbing continuing education providers and Plumbing continuing education courses.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amended administrative regulation does not establish new fees nor will it directly or indirectly increase existing fees.

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation. All Plumbing continuing education course providers and Plumbing continuing education courses will be treated equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Plumbing will be impacted by this amended administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 318.054 and 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 amended administrative regulation establishes no new fees nor creates new expenditures.

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

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

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

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

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: There is no anticipated fiscal impact from this amended administrative regulation to state or local government.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy
(Amendment)

900 KAR 6:060. Timetable for submission of certificate of need applications.

RELATES TO: KRS 216B.010, 216B.062, 216B.990

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 216B.040(2)(a)1, 216B.062(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. KRS 216B.062(1) and (2) require the cabinet to promulgate administrative regulations to establish timetables and batching groups for applications for certificates of need. This administrative regulation establishes the timetable for submission of application requirements necessary for the orderly administration of the Certificate of Need Program.

Section 1 Definitions. (1) "Cabinet" is defined by KRS 216B.015(5).

(2) "Certificate of Need Newsletter" means the monthly newsletter that is published by the cabinet regarding certificate of need matters and is available on the Certificate of Need Web site at http://chfs.ky.gov/ohp/con.

(3) "Formal review" means the review of applications for certificate of need which are reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and which are reviewed for compliance with the review criteria set forth at KRS 216B.040 and 900 KAR 6:070.

(4) "Long-term care beds" means nursing home beds, intermediate care beds, skilled nursing beds, nursing facility beds, and Alzheimer nursing home beds.

(5) "Nonsubstantive review" is defined by KRS 216B.015(17).

(6) "Public information channels" means the Office of Communication and Administrative Review in the Cabinet for Health and Family Services.

(7) "Public notice" means notice given through:

(a) Public information channels; or

(b) The cabinet's Certificate of Need Newsletter.

Section 2. Timetable for Submission of Applications. (1) The cabinet's timetable for giving public notice for applications deemed complete for formal review and for applications granted nonsubstantive review status pursuant to KRS 216B.095(3)(f) and 900 KAR 6:075 shall be as established in this subsection:

(a) Public notice for organ transplantation, magnetic resonance imaging, megavoltage radiation equipment, cardiac catheterization, open heart surgery, positron emission tomography equipment, Level I psychiatric residential treatment facility (Level 1 PRTF), Level II psychiatric residential treatment facility (Level II PRTF), and new technological developments shall be provided on the third Thursday of the following months:

1. January; and

2. July.

(b) Public notice for residential hospice facilities, hospice agencies, and home health agencies shall be provided on the third Thursday of the following months:

1. February; and

2. August.

(c) Public notice for ground ambulance providers, private duty nursing services, mobile services, and rehabilitation agencies shall be provided on the third Thursday of the following months:

1. March; and

2. September.

(d) Public notice for day health care programs, prescribed pediatric extended care facilities, and personal care beds shall be provided on the third Thursday of the following months:

1. April; and

2. October.

(e) Public notice for long-term care beds, acute care hospitals including all other State Health Plan covered services to be provided within the proposed acute care hospital, acute care hospital beds, psychiatric hospital beds, special care neonatal beds, comprehensive physical rehabilitation beds, chemical dependency beds, limited services clinics, ambulatory care centers, freestanding ambulatory surgical centers, outpatient health care centers, and birthing centers shall be provided on the third Thursday of the following months:

1. May; and

2. November.

(f) Public notice for intermediate care beds for mental retardation and developmentally disabled facilities shall be provided on the third Thursday of the following months:

1. June; and

2. December.

(g) A proposal not included in paragraphs (a) through (f) of this subsection shall be placed in the cycle that the cabinet determines to be most appropriate by placing it in the cycle with similar services.

(2) In order to have an application deemed complete and placed on public notice, an application shall be filed with the cabinet at least fifty (50) calendar days, but not more than eighty (80) calendar days, prior to the date of the desired public notice. Applications filed more than eighty (80) days, prior to the desired public notice shall be returned to the submitter with the prescribed fee set forth in 900 KAR 6:020.

Section 3. An application filed pursuant to KRS 216B.095(3)(a) through (e) may be filed at any time.

This is to certify that the Executive Director of the Office of Health Policy has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 156.070(4)

CARRIE BANAHAN, Executive Director
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 5, 2012

FILED WITH LRC: July 5, 2012 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 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 August 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 August 31, 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: Carrie Banahan or Chandra Venettozzi

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Cabinet's timetable for submission of certificate of need applications.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statute, KRS 216B.010, 216B.062, and 216B.990.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.010, 216B.062, and 216B.990 by establishing the timetable for submission of certificate of need applications.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of KRS 216B.010, 216B.062, and 216B.990 by establishing the timetables for submission of certificate of need applications.

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

(a) How the amendment will change this existing administrative regulation: This amendment will provide instructions so that applications filed outside the batching cycle will be returned with the appropriate filing fee.

(b) The necessity of the amendment to this administrative regulation: The Office of Health Policy must receive and process Certificate of Need applications within specified timeframes. This amendment provides more concise instructions to applicants to accomplish that task.

(c) How the amendment conforms to the content of the authorizing statutes: Pursuant to KRS 216B.062, applications for certificates of need shall be submitted according to timetables established by the cabinet by promulgation of administrative regulation, pursuant to the provisions of KRS Chapter 13A.

(d) How the amendment will assist in the effective administration of the statutes: Promulgation of this amended administrative regulation under KRS Chapter 13A shall provide more concise instructions regarding the submission of an application for inclusion in an appropriate batching cycle to assure that applications will be eligible for consideration at set intervals.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect about 160 entities that file a certificate of need application each year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: As the timetables set forth in the administrative regulation are currently established and operational, no new action will be required for regulated entities to comply with this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): As the timetables set forth in the administrative regulation are currently established and operational, no cost will be incurred by regulated entities to comply with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will provide more concise instructions regarding the timeframe for submission of applications and instructions that applications filed outside the batching cycle will be returned with the filing fee.

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

(a) Initially: No additional costs will be incurred to implement this regulation as we already utilize these timetables as part of our normal operations.

(b) On a continuing basis: No additional costs will be incurred to implement this regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation and enforcement of this administrative regulation will be from Office of Health Policy's existing budget. As stated above, the timetables are already used as part of our normal operations so no additional funding will be required.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects the Office of Health Policy within the Cabinet for Health and Family Services.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.010, 216B.062, 216B.990.

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation on a continuing basis.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy
(Amendment)

900 KAR 6:085. Implementation[~~Transfers~~] of outstanding Certificate of Need when ownership has changed.

RELATES TO: KRS 216B.010, 216B.061(1)(h), 216B.0615, 216B.990

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 216B.040(2)(a)1

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. This administrative regulation establishes the guidelines for the implementation[~~transfer~~] of outstanding[~~a~~] Certificates[~~certificate~~] of need when ownership has changed for an existing licensed facility[~~for the orderly administration of the Certificate of Need Program~~].

Section 1. Definitions. (1) "Cabinet" is defined by KRS 216B.015(5).

(2) "Outstanding" means a project has not been implemented and a license has not been issued by the Office of Inspector General.

(3) "Owner" means a person as defined in KRS 216B.015(21) who is applying for the certificate of need and will become the licensee of the proposed health service or facility.

Section 2. Implementation[~~Transfers~~] of outstanding Certificates of Need when ownership has changed. (1) A Certificate[~~Certificates~~] of need issued by the cabinet to an existing licensed facility for purposes other than replacement of the facility may be implemented by[~~transferred to~~] the new owner of the facility if the change of ownership occurs prior to implementation of the outstanding project for which the Certificate of need was issued.

(2) The purchase of all capital stock or a controlling interest of capital stock of[~~a person who is~~] the holder of an approved Certificate of need for the establishment of a new health facility shall not constitute the sale, trade, or transfer of a Certificate of need[~~need to another person~~] for purposes of KRS 216B.061(1)(h) and 216B.0615.900 KAR 6:085.

This is to certify that the Executive Director of the Office of Health Policy has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 156.070(4).

CARRIE BANAHAN, Executive Director
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 5, 2012

FILED WITH LRC: July 5, 2012 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall, if requested, be held on August 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 August 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 August 31, 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: Carrie Banahan or Chandra Venettozzi

1. Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the guidelines for implementation of outstanding certificate or need when ownership has changed.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statute: KRS 216B.040(2)(a)(1).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.040(2)(a)(1) by establishing the guidelines for implementation of outstanding certificate or need when ownership has changed.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of KRS 216B.040(2)(a)(1) by establishing the guidelines for implementation of outstanding certificate or need when ownership has changed.

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 intent of the existing administrative regulation remains unchanged. Language has been modified to more clearly state the purpose of the regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to more clearly state the purpose of the regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment carries out the requirements of KRS216B.040(2)(a)(1).

(d) How the amendment will assist in the effective administration of the statutes: This amendment will more clearly state the how the implementation of outstanding Certificate of Need when ownership has changed may occur.

3. List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect health care providers governed by the Certificate of Need law, citizens who use health care in Kentucky, health planners in the Certificate of Need Program, and local communities that plan for, use, or develop community health care facilities. Approximately 160 applications for Certificate of Need are received annually.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: As the guidelines for implementation of outstanding certificate or need when ownership has changed are currently established and operational, no new action will be required of regulated entities to comply with this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): As the guidelines for implementation of outstanding certificate or need when ownership has changed as set forth in the administrative regulation are currently established and operational, no cost will be incurred by regulated entities to comply with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities are benefited as information related to implementation of outstanding certificate or need when ownership has changed makes this regulation clearer and more concise.

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

(a) Initially: No cost

(b) On a continuing basis: No cost

6. What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary since there is no cost to implementing this administrative regulation.

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

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

9. TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment may impact any government owned, controlled or proposed healthcare facilities or services.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.040(2)(a)(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? No impact to revenues.

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

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy
(Amendment)

900 KAR 6:090. Certificate of Need filing, hearing, and show cause hearing.

RELATES TO: KRS 216B.010,[~~216B.062,~~] 216B.085, 216B.086, 216B.090, 216B.095, 216B.990

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 216B.040(2)(a)1

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. This administrative regulation establishes the requirements for filing, hearing, and show cause hearings necessary for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 216B.015(5).

(2) "Certificate of Need Newsletter" means the monthly newsletter that is published by the cabinet regarding certificate of need matters and is available on the Certificate of Need Web site at http://chfs.ky.gov/ohp/con.

(3) "Days" means calendar days, unless otherwise specified.

(4) "Formal review" means the review of applications for certificate of need which are reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and which are reviewed for compliance with the review criteria set forth at KRS 216B.040 and 900 KAR 6:070.

(5) "Nonsubstantive review" is defined by KRS 216B.015(17).

(6) "Office of Inspector General" means the office within the Cabinet for Health and Family Services that is responsible for licensing and regulatory functions of health facilities and services.

(7) "Office or clinic" means the physical location at which health care services are provided.

(8) "Owner" means a person as defined in KRS 216B.015(21) who is applying for the certificate of need and will become the licensee of the proposed health service or facility.

(9) "Practice" means the individual, entity, or group that proposes to provide health care services and shall include the owners and operators of an office or clinic.

(10) "Proposed findings" means the submission of a proposed final order by the applicant for review and consideration by the hearing officer.[~~"Primarily" means a simple majority or something that occurs at least fifty-one (51) percent of the time.~~]

(11) "Proposed service area" means the geographic area the applicant proposes to serve.

(12) "Public information channels" means the Office of Communication and Administrative Review in the Cabinet for Health and Family Services.

(13) "Public notice" means notice given through:

(a) Public information channels; or

(b) The cabinet's Certificate of Need Newsletter.

(14) [~~"Qualified academic medical center" means:~~

~~(a) An institution of higher education which operates an accredited medical school within the Commonwealth of Kentucky;~~

~~(b) An institution, organization, or other entity which directly or indirectly owns or is under common control or ownership with an accredited medical school operated within the Commonwealth of Kentucky; or~~

~~(c) An individual, organization, entity, or other person which is qualified under Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) as a result of supporting or operating in support of an institution, organization, entity, or other person of a type or types referenced in paragraph (a) or (b) of this subsection.~~

~~(15)~~] "Secretary" is defined by KRS 216B.015(25).

(15)[~~(16)~~] "Show cause hearing" means a hearing during which it is determined whether a person or entity has violated provisions of KRS Chapter 216B.

Section 2. Filing. (1) The filing of all documents required by this administrative regulation shall be made with the Office of Health Policy, CHR Building, 4 WE, 275 East Main Street, Frankfort, Kentucky 40621 on or before 4:30 p.m. eastern time on the due date.

(2) Filings of documents, other than certificate of need applications and proposed hearing reports, may be made by facsimile transmission if:

(a) The documents are received by the cabinet by facsimile transmission on or before 4:30 p.m. eastern time on the date due; and

(b) An original document is filed with the cabinet on or before 4:30 p.m. eastern time on the next business day after the due date.

(3) The Office of Health Policy shall endorse by file stamp the date that each filing is received and the endorsement shall constitute the filing of the document.

(4) In computing any period of time prescribed by this administrative regulation, the date of notice, decision, or order shall not be included.

(5) The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or legal state holiday, in which event the period shall run until 4:30 p.m. eastern time of the first business day following the Saturday, Sunday, or legal state holiday.

Section 3. Hearing. (1)(a) Hearings on certificate of need matters shall be held by hearing officers from the Cabinet for Health and Family Services, Health Services Administrative Hearings Branch.

(b) A hearing officer shall not act on any matter in which the hearing officer has a conflict of interest as defined in KRS 45A.340.

(c) Any party may file with the cabinet a petition for removal based upon a conflict of interest supported by affidavit.

(2) The hearing officer shall preside over the conduct of each hearing and shall regulate the course of the proceedings in a manner that shall promote the orderly and prompt conduct of the hearing.

(3) Notice of the time, date, place, and subject matter of each hearing shall be:

(a) Mailed to the applicant and all known affected persons providing the same or similar service in the proposed service area not less than ten (10) days prior to the date of the hearing;

(b) Published in the Certificate of Need Newsletter, if applicable; and

(c) Provided to members of the general public through public information channels.

(4) A public hearing shall be canceled if each person who requested the hearing withdraws the request by giving written notification to the Office of Health Policy that the hearing is no longer required. The consent of affected persons who have not requested a hearing shall not be required in order for a hearing to be canceled.

(5) Any dispositive motion made by a party to the proceedings shall be filed with the hearing officer at least three (3) working days prior to the scheduled date of the hearing.

(6) The hearing officer may convene a preliminary conference.

(a) The purposes of the conference shall be to:

1. Formulate and simplify the issues;

2. Identify additional information and evidence needed for the hearing; and

3. Dispose of pending motions.

(b) A written summary of the preliminary conference and the orders thereby issued shall be made a part of the record.

(c) The hearing officer shall:

1. Tape record the conference; or

2. If requested by a party to the proceedings, allow a stenographer to be present at the expense of the requesting party.

(d) During the preliminary conference, the hearing officer may:

1. Instruct the parties to:

a. Formulate and submit a list of genuine contested issues to be decided at the hearing;

b. Raise and address issues that can be decided before the hearing; or

c. Formulate and submit stipulations to facts, laws, and other matters;

2. Prescribe the manner and extent of the participation of the parties or persons who will participate;

3. Rule on any pending motions for discovery or subpoenas; or

4. Schedule dates for the submission of prefiled testimony, further preliminary conferences, and submission of briefs and documents.

(7) At least five (5) days prior to the scheduled date of any nonsubstantive review hearings and at least seven (7) days prior to the scheduled date of all other hearings, all persons wishing to participate as a party to the proceedings shall file with the cabinet an original and one (1) copy of the following for each affected application and serve copies on all other known parties to the proceedings:

(a) OHP - Form 3, Notice of Appearance, incorporated by reference in 900 KAR 6:055;

(b) OHP - Form 4, Witness List, incorporated by reference in 900 KAR 6:055; and

(c) OHP - Form 5, Exhibit List, incorporated by reference in 900 KAR 6:055 and attached exhibits.

(8)(a) If a hearing is requested on an application which has been deferred from a previous cycle and for which a hearing had previously been scheduled, parties shall:

1. File a new OHP - Form 3, Notice of Appearance; and

2. Either:

a. Incorporate previously-filed witness lists (OHP - Form 4) and exhibit lists (OHP - Form 5); or

b. File an amended OHP - Form 4 and OHP - Form 5.

(b) A new party to the hearings shall file an original OHP - Form 3, OHP - Form 4, and OHP – Form 5.

(c) Forms shall be filed in accordance with subsection (7) of this section.

(9) The hearing officer shall convene the hearing and shall state the purpose and scope of the hearing or the issues upon which evidence shall be heard. All parties appearing at the hearing shall enter an appearance by stating their names and addresses.

(10) Each party shall have the opportunity to:

(a) Present its case;

(b) Make opening statements;

(c) Call and examine witnesses;

(d) Offer documentary evidence into the record;

(e) Make closing statements; and

(f) Cross-examine opposing witnesses on:

1. Matters covered in direct examination; and

2. At the discretion of the hearing officer, other matters relevant to the issues.

(11) A party that is a corporation shall be represented by an attorney licensed to practice in the Commonwealth of Kentucky.

(12) The hearing officer may:

(a) Allow testimony or other evidence on issues not previously identified in the preliminary order which may arise during the course of the hearing, including any additional petitions for intervention which may be filed;

(b) Act to exclude irrelevant, immaterial, or unduly repetitious evidence; and

(c) Question any party or witness.

(13) The hearing officer shall not be bound by the Kentucky Rules of Evidence. Relevant hearsay evidence may be allowed at the discretion of the hearing officer.

(14) The hearing officer shall have discretion to designate the order of presentation of evidence and the burden of proof as to persuasion.

(15) Witnesses shall be examined under oath or affirmation.

(16) Witnesses may, at the discretion of the hearing officer:

(a) Appear through deposition or in person; and

(b) Provide written testimony in accordance with the following:

1. The written testimony of a witness shall be in the form of questions and answers or a narrative statement;

2. The witness shall authenticate the document under oath; and

3. The witness shall be subject to cross-examination.

(17) The hearing officer may accept documentary evidence in the form of copies of excerpts if:

(a) The original is not readily available;

(b) Upon request, parties are given an opportunity to compare the copy with the original; and

(c) The documents to be considered for acceptance are listed on and attached to the party's Exhibit List (OHP - Form 5) and filed with the hearing officer and other parties at least:

1. Seven (7) days before the hearing for formal review applications; or

2. Five (5) days before the hearing for nonsubstantive review applications.

(18) A document shall not be incorporated into the record by reference without the permission of the hearing officer. Any referenced document shall be precisely identified.

(19) The hearing officer may take official notice of facts which are not in dispute or of generally-recognized technical or scientific facts within the agency's special knowledge.

(20) The hearing officer may permit a party to offer, or request a party to produce, additional evidence or briefs of issues as part of the record within a designated time after the conclusion of the hearing. During this period, the hearing record shall remain open. The conclusion of the hearing shall occur when the additional information is timely filed or at the end of the designated time period, whichever occurs first.

(21) In a hearing on an application for a certificate of need, the hearing officer shall, upon the agreement of the applicant, continue a hearing beyond the review deadlines established by KRS 216B.062(1) and 216B.095(1).

(22) <u>If all parties agree to waive the established decision date, the hearing officer shall render a decision within sixty (60) days of the filing of proposed findings.</u>

<u>(23)</u> The cabinet shall forward a copy of the hearing officer's final decision by U.S. mail to each party to the proceedings. The original hearing decision shall be filed in the administrative record maintained by the cabinet.

Section 4. Show Cause Hearing. (1) The cabinet may conduct a show cause hearing on its own initiative or at the request of an affected person, to include hearings requested pursuant to Humana of Kentucky v. NKC Hospitals, Ky., 751 S.W.2d 369 (1988), in order to determine if a person has established or is operating a health facility or health service in violation of the provisions of KRS Chapter 216B or 900 KAR Chapter 6 or is subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

(2) Unless initiated by the cabinet, in order for a show cause hearing to be held, a request for a show cause hearing submitted by an affected person shall be accompanied and corroborated by credible, relevant, and substantial evidence, including an affidavit or other documentation which demonstrates that there is probable cause to believe that a person:

(a) Has established, or is operating, a health facility or health service in violation of the provisions of KRS Chapter 216B or 900 KAR Chapter 6; or

(b) Is subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

(3) Based upon the materials accompanying the request for a show cause hearing, the cabinet shall determine if sufficient cause exists to conduct a hearing.

(4) The cabinet shall conduct a show cause hearing based on its own investigation pursuant to an annual licensure inspection or otherwise which reveals a possible violation of the terms or conditions which are a part of a certificate of need approval and license.

(5) The cabinet shall also conduct a show cause hearing regarding terms and conditions which are a part of a certificate of need approval and license at the request of any person.

(6) The show cause hearing regarding the terms and conditions shall determine whether a person is operating a health facility or health service in violation of any terms or conditions which are a part of that certificate of need approval and license.

(7) Show cause hearings shall be conducted in accordance with the provisions of Section 3 of this administrative regulation.

(8) If a show cause hearing is held, the individual or entity <u>alleging the violation, including the Cabinet, shall have the burden of establishing by a preponderance of evidence the alleged violations. The burden is met with evidence that the changed entity:</u>[~~alleged to be in violation of KRS Chapter 216B shall have the burden of showing that the individual or entity:~~]

(a) Has[~~not~~] established or is[~~not~~] operating a health facility or

health service in violation of the provisions of KRS Chapter 216B or 900 KAR Chapter 6; or

(b) Is not subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

(9)(a) If[~~Except as provided by paragraph (b) or (c) of this subsection, if~~] it is alleged that an office or clinic offering services or equipment covered by the State Health Plan was established or is operating in violation of KRS 216B.020(2)(a), the hearing officer shall base his or her proposed findings of fact, conclusions of law, and proposed decision on whether the clinic or office meets the physician exemption criteria set forth in 900 KAR 6:135, Certificate of Need criteria for physician exemption.[~~the evidence has established the following:~~

~~1. The practice claiming the exemption is 100 percent owned in any organizational form recognized by the Commonwealth by the individual physician, dentist, or other practitioner of the healing arts or group of physicians, dentists, or other practitioners of the healing arts (hereinafter collectively referred to as "physician") claiming the exemption;~~

~~2. The practice claiming the exemption primarily provides physician services (e.g., evaluation and management codes) rather than services or equipment covered by the State Health Plan;~~

~~3. Services or equipment covered by the State Health Plan which are offered or provided at the office or clinic shall be primarily provided to patients whose medical conditions are being treated or managed by the practice;~~

~~4. A physician or physicians licensed to practice and practicing in Kentucky within the practice claiming the exemption are responsible for all decisions regarding the care and treatment provided to patients;~~

~~5. Patients are treated on an outpatient basis and are not maintained overnight on the premises of the office or clinic;~~

~~6. Services or equipment covered by the State Health Plan that are offered or provided at the office or clinic are related to the professional services offered to patients of the practice claiming the exemption;~~

~~7. Major medical equipment in excess of the limits set forth in 900 KAR 6:030 is not being utilized without a Certificate of Need or other statutory or regulatory exemption; and~~

~~8. Nothing in this section shall limit or prohibit the continued operation of an office or clinic that was established and in operation prior to January 31, 2006, and operating pursuant to and in accordance with the following:~~

~~a. Provisions of a Certificate of Need advisory opinion issued specifically with respect to that office or clinic;~~

~~b. Provisions of an Attorney General opinion issued specifically with respect to that office or clinic; or~~

~~c. An order issued with respect to that office or clinic by a court of competent jurisdiction in the Commonwealth of Kentucky.~~

~~(b) A practice owned entirely by a radiologist or group of radiologists shall demonstrate the following:~~

~~1. Compliance with paragraph (a)1, 4, 5, and 6 of this subsection;~~

~~2. The radiologists shall regularly perform physician services (e.g., test interpretations) at the location where the diagnostic tests are performed, including interpretations by or through teleradiology; and~~

~~3. The billing patterns of the practice indicate that the practice is not primarily a testing facility and that it was organized to provide the professional services of radiology.~~

~~(c) An office or clinic owned and operated by a Qualified Academic Medical Center shall demonstrate the following:~~

~~1. The physician or physicians providing care and treatment to the patients of the office or clinic shall be licensed to practice in Kentucky and shall be employed by the Qualified Academic Medical Center; and~~

~~2.a. The office was established and in operation prior to January 31, 2006;~~

~~b. The office does not provide any services or equipment covered by the State Health Plan; or~~

~~c. At the time the office began providing care and treatment to patients, it was not located in a county designated as a Metropolitan Statistical Area as defined by the U.S. Office of Management and Budget, and there is a documented agreement of support or collaboration between the Qualified Academic Medical Center and each existing hospital in the county in which the office is located.~~]

(10) Prior to convening a show cause hearing, the cabinet shall give the person suspected or alleged to be in violation not less than twenty (20) days' notice of its intent to conduct a hearing.

(11) The notice shall advise the person of:

(a) The allegations against the person;

(b) Any facts determined to exist which support the existence of the allegation; and

(c) The statute or administrative regulation alleged to have been violated.

(12) Notice of the time, date, place, and subject matter of each hearing shall be:

(a) Mailed to all known affected persons or entities not less than ten (10) business days prior to the date of the hearing; and

(b) Published in the Certificate of Need Newsletter, if applicable.

(13) At least seven (7)[~~business~~] days prior to all hearings required or requested pursuant to KRS Chapter 216B, with the exception of hearings involving applications for or revocation of a certificate of need, all persons or entities wishing to participate as a party to the proceedings shall file an original and one (1) copy of the following with the cabinet and serve copies on all other known parties to the proceedings:

(a) OHP - Form 3, Notice of Appearance;

(b) OHP - Form 4, Witness List; and

(c) OHP - Form 5, Exhibit List and attached exhibits.

(14) Within thirty (30) days of the conclusion of the hearing, the hearing officer shall tender findings of fact and a proposed decision to the secretary.

(15) Within thirty (30) days of the receipt of the findings of fact and proposed decision from the hearing officer, the secretary shall issue a final decision on the matter.

(16) A copy of the final decision shall be mailed to the person or his legal representative with the original hearing decision filed in the administrative record maintained by the cabinet.

(17) If a violation is found to have occurred as a result of a show cause hearing conducted pursuant to subsection (1) of this section, the cabinet shall take action as provided by KRS Chapter 216B.

(18) If the person is found to have violated any of the terms or conditions of any certificate of need approval and license as a result of a show cause hearing conducted pursuant to subsection (4) of this section, the cabinet shall take the following action:

(a) If the person had not previously been found to be in violation of the terms and conditions which were made a part of the person's certificate of need approval and license, the person shall be given a period of time, not to exceed sixty (60) days after issuance of the cabinet's decision, in which to demonstrate that the violation has been corrected. At the conclusion of this period, the cabinet shall verify that the facility or service is operating in compliance with the terms or conditions of the certificate of need and license at issue.

(b) If the cabinet is unable to verify that the facility or service has corrected the violation in accordance with paragraph (a) of this subsection, or if a person who had previously been found to be in violation of the terms and conditions which were a part of the person's certificate of need approval and license is found in a subsequent show cause hearing conducted pursuant to this section to be in violation of the terms and conditions again, the matter shall be referred to the Office of Inspector General for appropriate action.

(19) The deadlines established with respect to hearings shall be modified if agreed to by all parties and the hearing officer. 900 KAR 6:090

CARRIE BANAHAN, Executive Director
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 9, 2012

FILED WITH LRC: July 10, 2012 at 11 A.M.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 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 August 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 August 31, 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: Carrie Banahan or Chandra Venettozzi

1. Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the guidelines for filing, hearing, and show cause hearing for the certificate of need program. Language in this regulation related criteria that exempts physicians from the Certificate of Need program has been deleted as it is now included in regulations – 900 KAR 6:130 – Certificate of Need criteria for physician exemption. Language was added to this regulation to clarify that if all parties agree to waive the established hearing decision date, the hearing officer must still render a decision within sixty (60) days of the filing of proposed findings and clarify that parties wishing to participate in the hearing have 7 days rather than 7 business days to provide notice. Also, language was added to reference regulation 900 KAR 6:130 for specific information about physician exemption.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statute: KRS 216B.010, 216B.085, 216B.086, 216B.090, 216B.095, 216B.990.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.010, 216B.085, 216B.086, 216B.090, 216B.095, 216B.990 by establishing the guidelines for filing, hearing, and show cause hearing for the certificate of need program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of KRS 216B.010, 216B.085, 216B.086, 216B.090, 216B.095, 216B.990 by establishing the guidelines for filing, hearing, and show cause hearing for the certificate of need 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: Language in this regulation related to criteria that exempts physicians from the Certificate of Need program has been deleted as it is now included in regulation – 900 KAR 6:130 – Certificate of Need criteria for physician exemption. Language was added to this regulation to clarify that if all parties agree to waive the established hearing decision date, the hearing officer must still render a decision within sixty (60) days of the filing of proposed findings and clarify that parties wishing to participate in the hearing have 7 days rather than 7 business days to provide notice. Also, language was added to reference regulation 900 KAR 6:130 for specific information about physician exemption.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to move language in this regulation related to filing of documents for to the Certificate of Need Program as well as criteria that exempts physicians from the Certificate of Need program to a new regulation – 900 KAR 6:130 – Certificate of Need criteria for physician exemption. Language was added to this regulation to clarify that if all parties agree to waive the established hearing decision date, the hearing officer must still render a decision within sixty (60) days of the filing of proposed findings and clarify that parties wishing to participate in the hearing have 7 days rather than 7 business days to provide notice. Also, language was added to reference regulation 900 KAR 6:130 for specific information about physician exemption.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment carries out the requirements of KRS 216B.010, 216B.085, 216B.086, 216B.090, 216B.095, 216B.990 which relate to hearings and show cause hearings.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide instructions related to hearing and show cause hearing for the orderly administration of the Certificate of Need Program.

3. List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect health care providers governed by the Certificate of Need law, citizens who use health care in Kentucky, health planners in the Certificate of Need Program, and local communities that plan for, use, or develop community health care facilities. Approximately 160 applications for Certificate of Need are received annually.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: As the guidelines for hearing and show cause hearing for the certificate of need program set forth in the administrative regulation are currently established and operational, no new action will be required of regulated entities to comply with this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): As the guidelines for hearing and show cause hearing for the certificate of need program set forth in the administrative regulation are currently established and operational, no cost will be incurred by regulated entities to comply with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities are benefited as information related to filing and physician exemption criteria is being moved to another regulation making this regulation clearer and more concise.

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

(a) Initially: No cost

(b) On a continuing basis: No cost

6. What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary since there is no cost to implementing this administrative regulation.

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

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

9. TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment may impact any government owned, controlled or proposed healthcare facilities or services.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation KRS 216B.010, 216B.085, 216B.086, 216B.090,

216B.095, 216B.990.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

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

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

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Audits and Investigations
(Amendment)

906 KAR 1:160. Monitoring system for products containing ephedrine, pseudoephedrine, or phenylpropanolamine.

RELATES TO: KRS 15.380, 218A.1446, 218A.240

STATUTORY AUTHORITY: KRS[~~194A.050(1),~~] 218A.1446

NECESSITY, FUNCTION, AND CONFORMITY:[~~KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs.~~] KRS 218A.1446 authorizes the Cabinet for Health and Family Services and the Office of Drug Control Policy to establish an electronic recordkeeping mechanism for monitoring the sale of any nonprescription compound, mixture, or preparation containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers.[~~KRS 218A.1446(3) states that pursuant to administrative regulations promulgated by the Drug Enforcement and Professional Practices Branch and the Office of Drug Control Policy (ODCP), pharmacies requesting an exemption to electronic reporting may file an exemption request to the Branch and ODCP.~~] This administrative regulation establishes the Kentucky Electronic Methamphetamine Precursor Tracking (KEMPT) system[~~, and establishes the requirements for an exemption from electronic reporting~~].

Section 1. Definitions. (1) "Attempted purchase" means information regarding a transaction is entered into the KEMPT system by a dispenser of a precursor to methamphetamine and the sale is not completed because the system recommends that the transaction be denied pursuant to KRS 218A.1446(5) or (6).

(2)[~~"Branch" means the Drug Enforcement and Professional Practices Branch within the Division of Audits and Investigations, Office of the Inspector General, Cabinet for Health and Family Services.~~

~~(3)~~] "Cabinet" is defined by KRS 218A.010(3).

(3)[~~(4)~~] "Dispenser of a precursor to methamphetamine" means a registered pharmacist, pharmacy intern, or pharmacy technician who lawfully sells[~~dispenses~~] a nonprescription compound, mixture, or preparation containing a detectable quantity of ephedrine, pseudoephedrine, phenylpropanolamine, their salts or optical isomers, or salts of optical isomers.

(4)[~~(5)~~] "Kentucky Electronic Methamphetamine Precursor Tracking" or "KEMPT" means the electronic recordkeeping mechanism used[~~contracted for~~] by the Office of Drug Control Policy to monitor the sale of a nonprescription compound, mixture, or preparation containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers.

(5)[~~(6)~~] "Law enforcement officer" means a:

(a) Drug enforcement agent designated by the Cabinet for Health and Family Services pursuant to KRS 218A.240(2);

(b) Kentucky peace officer certified pursuant to KRS 15.380 as a:

1. Kentucky State Police officer;
2. City, county, or urban-county police officer;
3. Deputy sheriff; or
4. State or public university safety and security officer;

(c) Certified or full-time peace officer of another state; or

(d) Federal peace officer.

(6)[~~(7)~~] "ODCP" means the Office of Drug Control Policy within the Kentucky Justice and Public Safety Cabinet.

(7)[~~(8)~~] "Precursor to methamphetamine" means a nonprescription compound, mixture, or preparation containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers.

(8)[~~(9)~~] "Purchaser" means an individual age eighteen (18) or older who purchases, or attempts to purchase, a nonprescription compound, mixture, or preparation containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers.

Section 2. Electronic Reporting. (1)[~~Unless granted an exemption pursuant to Section 3(5) of this administrative regulation or using an alternative electronic reporting mechanism approved pursuant to KRS 218A.1446(2)(b),~~] The following information shall be entered in the KEMPT system upon the purchase, or attempted purchase, of a precursor to methamphetamine:

(a) Date of transaction pursuant to KRS 218A.1446(2)(b), which is entered manually or recorded automatically by KEMPT;

(b) Identifying information regarding the purchaser pursuant to KRS 218A.1446(2)(b) and a government-issued photo identification number; and

(c) Amount and name of the product dispensed pursuant to KRS 218A.1446(2)(b).

(2) The ODCP[~~cabinet~~] shall be solely responsible for the security of the transaction information required by subsection (1) of this section after a dispenser of a precursor to methamphetamine transmits the information.

(3) The ODCP[~~cabinet~~] shall provide a toll-free telephone number:

(a) For technical support available to a dispenser of a precursor to methamphetamine twenty-four (24) hours per day, seven (7) days per week; and

(b) For customer service available to a purchaser who has an inquiry regarding a transaction, Monday through Friday, 8 a.m. to 4:30 p.m., except for state recognized holidays.

(4) A pharmacy may use a hardcopy signature logbook consisting of each purchaser's signature and transaction number to meet the requirement for obtaining electronic signatures.[~~A pharmacy that uses the KEMPT system shall be exempt from maintaining a written log of the information required by KRS 218A.1446(2)(b).~~

~~(5) A pharmacy that is not able to secure an electronic signature shall maintain a hardcopy signature logbook consisting of each purchaser's signature and transaction number.~~]

Section 3. Extension for Reporting Information and Exemption from Electronic Reporting. (1) If a dispenser of a precursor to methamphetamine experiences mechanical or electronic failure, the ODCP[~~cabinet~~] shall grant an extension for reporting the information required by Section 2(1) of this administrative regulation.

(2) To request an extension for reporting information required by Section 2(1) of this administrative regulation, a dispenser of a precursor to methamphetamine shall submit a request to the ODCP[~~cabinet~~] that:

(a) States the reason for the request;

(b) Identifies the period of time for which the extension is necessary, not to exceed seventy-two (72) hours; and

(c) Is submitted:

1. Within twenty-four (24) hours of discovery of the circumstances resulting in the need for an extension request; or

2. On the day following a holiday or weekend if the discovery occurs on a day that ODCP[~~cabinet~~] offices are closed.

(3) If a transaction occurs during the time period in which a request described in subsection (2) of this section is pending, a dispenser of a precursor to methamphetamine shall:

(a) Maintain a written log or[~~an alternative~~] electronic recordkeeping mechanism approved pursuant to KRS 218A.1446(2)(b) of the information required by Section 2(1) of this administrative regulation; and

(b) Enter the information in the KEMPT system within seventy-two (72) hours of the system becoming operational.

(4) The ODCP[~~cabinet~~] shall acknowledge receipt of a request described in subsection (2) of this section within:

(a) Twenty-four (24) hours or receipt; or

(b) On the day following a holiday or weekend if ODCP[~~cabinet~~] offices are closed.[~~(5) An exemption from the electronic reporting requirement described in Section 2 of this administrative regulation shall be granted upon receipt by the branch and ODCP of a pharmacy's written request for exemption if the request complies with KRS 218A.1446(3)(c).~~]

Section 4. Request for KEMPT Reports. (1) The ODCP[~~cabinet~~] shall provide a KEMPT report:

(a) To a law enforcement officer whose duty is to enforce the laws of this state, another state, or of the United States relating to drugs;

(b) To a pharmacy;

(c) Pursuant to a subpoena issued by a grand jury; or

(d) Pursuant to a court order issued by a criminal court.

(2) The ODCP[~~cabinet~~] shall not provide a KEMPT report to a person or entity that is not authorized in accordance with subsection (1) of this section to receive the report.

(3)[~~A law enforcement officer or pharmacy may submit an electronic request for a KEMPT report at the following Web site: http://chfs.ky.gov/kempt.~~

~~(4)~~] A KEMPT report provided to a pharmacy shall not identify the dispenser of a precursor to methamphetamine or the dispensing pharmacy.

Section 5. Denial of Transactions and Overrides. (1) If an individual attempts to purchase a precursor to methamphetamine in violation of the thirty (30) day or one (1) year restrictions[~~nine (9) gram restriction~~] established by KRS 218A.1446(5), or the age restriction established by KRS 218A.1446(6), the KEMPT system shall:

(a) Notify the pharmacy at the time of sale; and

(b) Recommend that the pharmacy deny the transaction.

(2) The KEMPT system shall provide an override feature for use by a dispenser of a precursor of methamphetamine to allow completion of the sale.

Section 6. Compliance Date.[~~Unless granted an exemption pursuant to Section 3(5) of this administrative regulation or using an alternative electronic reporting mechanism approved pursuant to KRS 218A.1446(2)(b),~~] All pharmacies that dispense precursors to methamphetamine shall:

(1) Comply with the electronic reporting requirements of Section 2 of this administration regulation within (30) days of the date that a pharmacy has access to KEMPT; or

(2) Submit a request to[~~the branch and~~] ODCP for an extension if the pharmacy is not able to comply with the electronic reporting requirements on the date the pharmacy has access to KEMPT.

MARY REINLE BEGLEY, Inspector General
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 13, 2012

FILED WITH LRC: July 13, 2012 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2012, at 9:00 a.m. in Auditorium A, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 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 canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business August 31, 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): Van Ingram, Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes an electronic recordkeeping mechanism called the Kentucky Electronic Methamphetamine Precursor Tracking (KEMPT) system for monitoring the sale of drugs containing ephedrine, pseudoephedrine, or phenylpropanolamine.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statute, KRS 218A.1446.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 218A.1446 by establishing an electronic recordkeeping mechanism to monitor the sale of drugs containing ephedrine, pseudoephedrine, or phenylpropanolamine.

(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 218A.1446 by establishing an electronic recordkeeping mechanism to monitor the sale of drugs containing ephedrine, pseudoephedrine, or phenylpropanolamine.

(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 passage of SB 3 from the 2012 Session of the General Assembly decreased the monthly over-the-counter purchase limit of ephedrine and pseudoephedrine in pill or tablet form from 9 grams to 7.2 grams within a 30 day period and imposed a 24 gram yearly limit. Therefore, this amendment updates the language of Section 5(1) for compliance with the 30 day and one year restrictions. Additionally, because SB 3 replaced the paper-tracking system currently in place for the purchase of medicines containing ephedrine and pseudoephedrine with a mandatory electronic system, this amendment deletes obsolete language related to paper-based tracking.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure compliance with 2012 (Regular Session) Ky. Acts ch. 122 (2012 SB 3).

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by making necessary updates for compliance with 2012 (Regular Session) Ky. Acts ch. 122 (2012 SB 3).

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by ensuring compliance with 2012 (Regular Session) Ky. Acts ch. 122 (2012 SB 3).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects pharmacies that sell drugs containing ephedrine, pseudoephedrine, or phenylpropanolamine.

(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: Kentucky's pharmacies will be required to comply with the provisions of SB 3 from the 2012 Session of the General Assembly, which replaced the paper-tracking system currently in place for the purchase of medicines containing ephedrine and pseudoephedrine with a mandatory electronic system. Additionally, pharmacies will not be allowed to sell over-the-counter ephedrine and pseudoephedrine in pill or tablet form to an individual who has purchased more than 7.2 grams during a 30 day period or 24 grams during a one year period.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Pharmacies will not incur any costs to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment provides needed revisions to ensure compliance with
2012 (Regular Session) Ky. Acts ch. 122 (2012 SB 3).

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

(a) Initially: No additional costs will be incurred to implement this amendment.

(b) On a continuing basis: No additional costs will be incurred to implement this amendment on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The system is provided at no cost to the state.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. 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 pharmacies that sell drugs containing ephedrine, pseudoephedrine, or phenylpropanolamine.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 218A.1446

3. 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? There will be no additional revenue generated for state or local government for the first year that this administrative regulation is in effect.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no additional revenue generated for state or local government during subsequent years after this administrative regulation becomes effective.

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

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this amendment on a continuing basis.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Income Support
Child Support Enforcement
(Amendment)

921 KAR 1:001. Definitions.

RELATES TO: KRS 194A.050, 205.710-205.800, 403.210-403.240, 405.440, 405.520, 407.5101-407.5902, 45 C.F.R. 302.31, 302.33-302.38, 302.50-302.54, 302.56, 302.60, 302.80, 303.2-303.4, 303.6, 303.8, 303.15, 303.30-303.31, 303.70, 303.100-303.102, 42 U.S.C. 651 et seq.

STATUTORY AUTHORITY: KRS 194A.050, 205.710-205.800, 405.440, 405.520, 42 U.S.C. 651 et seq.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194B.050 provides that the Cabinet for Health and Family Services administer the Child Support Enforcement Program (CSEP)[~~(CSP)~~]. This administrative regulation sets forth definitions of terms used by the cabinet in administrative regulations pertaining to the Child Support Enforcement Program.

Section 1. Definitions of terms utilized in administrative regulations relating to the Child Support Enforcement Program are as follows:

(1) "Arrearage" means the total unpaid support obligation established by judicial or administrative order owed by a noncustodial parent, or obligor.

(2) "Assignment of rights" means the written transfer of rights to any child support,[~~any~~] medical support, or spousal support obligation to the state.

(3) "Assigned support obligation" means any child support, spousal support, or medical support obligation assigned to the state.

(4) "Authority to collect" means the nonpublic assistance custodial parent's authorization for the Cabinet for Health and Family Services to collect child support, medical support, or spousal support owed on behalf of the family for whom the cabinet is providing child support services.

(5) "Central registry" means a centralized office within the state agency responsible for:

(a) Receiving and distributing an incoming intergovernmental[~~interstate~~] request; and

(b) Responding to an inquiry received from another state, tribe, or agency regarding an intergovernmental[~~interstate~~] case.

(6) "Cold check" means insufficient funds for the check tendered, stop payment order on the check tendered or closed account.

(7) "CSEP"["~~CSP"~~] means the Child Support Enforcement Program.

(8) "Custodial parent" means either a mother or father of a dependent child who is living in the home with the child.

(9) "Default" means the noncustodial parent's, or obligor's[~~,~~] failure to return a financial statement or to keep an appointment, and the noncustodial parent's, or obligor's, income and assets cannot be obtained and verified from another source to determine a support obligation based on the Kentucky child support guidelines.

(10) "Administrative[~~Dispute~~] hearing" means the process whereby a parent's objections to administrative determinations of the cabinet are heard by an impartial hearing officer upon a timely request.

(11) "Distribution" means either a disbursement of a collection to the family or an allotment of various portions of the collection to the state and federal government for the reimbursement of the share of the K-TAP assistance payment to the family, or money

expended for a child in the custody of the state.

(12) "Escrow" means the difference between the amount of the assistance payment for the month in which the amount of the collection is used to redetermine eligibility and either the monthly obligation or the amount collected, whichever is less.

(13) "Excess collections" means the amount of the collection which exceeds the monthly obligation amount.

(14) "Income" means earnings or other periodic entitlements to money from any source and any other property subject to withholding for support as described in KRS 205.710(10), (11), (15) and 403.212(2).

(15) "Initiating agency" means a State or Tribal IV-D agency or an agency in a country, as defined in 45 C.F.R. 303.1, in which an individual has applied for or is receiving IV-D services.

(16) "Intergovernmental IV-D case" means a IV-D case in which the noncustodial parent lives and/or works in a different jurisdiction than the custodial parent and child(ren) that has been referred by an initiating agency to a responding agency for services. An intergovernmental IV-D case may include any combination of referrals between states, tribes and countries. An intergovernmental IV-D case also may include cases in which a state agency is seeking only to collect support arrearages, whether owed to the family or assigned to the state.

(17) [~~"Initiating state" means the state that initiates child support activity on behalf of a child whose parent resides outside the child's state of residence or a state in which a proceeding is filed for forwarding to a responding state. (16)~~] "Kentucky Transitional Assistance Program (K-TAP)", Kentucky's Temporary Assistance for Needy Families (TANF) Program means a money payment program for children who are deprived of parental support or care due to:

(a) Death, continued voluntary or involuntary absence, physical or mental incapacity of a parent; or

(b) Unemployment of at least one (1) parent when both parents are in the home.

(18)[~~(17)~~] "Location" means the determination of a parent's location, income, assets, property or debt as provided by KRS 205.730(5).

(19)[~~(18)~~] "Long-arm statutory authority" means a state statute which provides for state jurisdiction over a nonresident.

(20)[~~(19)~~] "Noncustodial parent, or obligor" means either a mother or father of a dependent child who is not living in the home with the child. This term may also be used to describe the alleged father in a paternity case.

(21)[~~(20)~~] "Notice of monthly support obligation" means an administrative order issued by the cabinet as specified in KRS 405.440 notifying the noncustodial parent, or obligor, of the child support and medical support obligation and of the noncustodial parent's, or obligor's right to request an administrative[~~a~~] hearing.

(22)[~~(21)~~] "Nonparental custodian" means:

(a) An adult who has been court appointed as the custodian of a minor child and is living in the home with the child; or

(b) Any other person or entity that may have standing to request services on behalf of a child.

(23)[~~(22)~~] "Obligor" means that individual who is ordered to pay child support, spousal support, medical support, or health care coverage.

(24)[~~(23)~~] "Offset" means to set aside federal or state, or both, income tax refunds or nonexempt federal payments due a noncustodial parent, or obligor, as a means of collecting past-due child support.

(25)[~~(24)~~] "Order and notice to withhold income for child support" means an administrative order issued by the cabinet, or a judicial order to an obligor's employer to withhold an amount equal to the current obligation plus an amount to be applied toward liquidation of any arrearage, and when applicable, the employee-paid share of the cost of health insurance coverage for a dependent child.

(26)[~~(25)~~] "Preoffset notice" means a letter notifying a noncustodial parent, or obligor, who owes an arrearage that the arrearage has been certified for state and federal tax refund intercept, state tax refund intercept only, passport denial or revocation, administrative offset of nonexempt federal payments, offset of lottery winnings, and to certified consumer credit reporting agencies.

(27)[~~(26)~~] "Postreview challenge period" means the thirty (30) days following the date of the notice of adjustment or the notice of no change following the review for modification of the child support order.

(28)[~~(27)~~] "Public assistance" means the receipt of K-TAP, including child care or work subsidies and vouchers; Medicaid; or foster care benefits.

(29) "Responding agency" means the agency that is providing IV-D services in response to a referral from an initiating agency in an intergovernmental IV-D case.

(30)[~~(28) "Responding state" means the state that is managing the child support case received from an initiating state or a state to which a proceeding is forwarded for filing. (29)~~] "Spousal support" means a legally enforceable obligation assessed against an individual for the support of a spouse or former spouse who is living with a child or children of that individual, even if child support is not part of the order.

(31)[~~(30)~~] "Unassigned arrearage" means any arrearage that accrues that is not assigned to the Cabinet for Health and Family Services.

STEVEN P. VENO, Deputy Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 13, 2012

FILED WITH LRC: July 13, 2012 at 11a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2012, in the Public Health Board Room, Second Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 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 canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business August 31, 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 40601, phone 502-564-7905, fax 502-564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mary W. Sparrow

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth definitions of terms used by the cabinet in administrative regulations pertaining to the Child Support Enforcement Program.

(b) The necessity of this administrative regulation: This regulation is necessary as it provides terms and definitions that are used in 921 KAR 1:380, 1:400, 1:410 and 1:4020.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation sets forth terms and their definitions used throughout the regulations cited in (b).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides terms and definitions that are beneficial to the general public as well as CHFS staff.

(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 revises existing language from "Interstate" to "Intergovernmental," "Initiating state" to "Initiating agency" and "Responding state" to "Responding agency." These changes were federally mandated in the Final Rule: Intergovernmental Child Support, published in the Federal Register on July 2, 2010, issued

by Action Transmittal 10-06.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to define terms used in the regulations pertaining to child support enforcement (921 KAR 1:380, 1:390, 1:400, 1:410 and 1:420) as we as in statute.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes provide guidance for the CSE program; this amended regulation provides terms and definitions that allow the public a better understanding of the CSE program.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide updated terms and their definitions in accordance with the federal mandate.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Persons that have a IV-D Child Support case will be affected by the new terms and definitions.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Those individuals affected by this regulation (persons that have a IV-D child support case) will comply with the revised definitions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs associated with this amended regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals affected by this regulation will benefit from updated terms and definitions that are consistent with federal language.

(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 initially to implement the amended definitions.

(b) On a continuing basis: There will be no cost on a continuing basis to implement the amended definitions

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There are no costs or increase in costs associated with this amended regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no costs or increase in costs associated with this amended regulation.

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Action Transmittal 10-06, issued the Final Rule: Intergovernmental Child Support changes to 45 Code of Federal Regulations Parts 301, 302, 303, 305, and 308.

2. State compliance standards. KRS 194A.050, 205.710 205.800, 405.440 and 405.520.

3. Minimum or uniform standards contained in the federal mandate. CSE has mirrored the changes outlined in the final rule in 921 KAR 1:001 and 921 KAR 1:380.

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. Not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) 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 Cabinet for Health and Family Services and the Department for Income Support, child Support Enforcement Program are impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.50 (1), 205.795, 405.520

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The Child Support Enforcement Program has been operational since 1975 and does not directly generate any revenue. The amendment to this administrative regulation will not generate any additional revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment to this administrative regulation will not generate any additional revenue in subsequent years

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Income Support
Child Support Enforcement
(Amendment)

921 KAR 1:380. Child Support Enforcement Program application and Intergovernmental[~~interstate~~] process.

RELATES TO: KRS 205.705, 205.710-205.800, 205.992, 213.046(4), 403.211, 405.430(5), 405.520, 405.467, 406.021, 406.025, 407.5101-407.5902, 610.170, 45 C.F.R. 301.1, 302.30, 302.31, 302.33-302.36, 302.50, 302.65, 302.80, 303.2, 303.3-303.15, 303.30-303.31, 303.69, 303.70, 42 U.S.C. 651-654, 657, 663, 666

STATUTORY AUTHORITY: KRS 194A.050(1), 205.795, 405.520

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050 (1), 205.795, and 405.520 authorize the secretary to promulgate administrative regulations to operate the Child Support Enforcement Program (CSEP) in accordance with federal law and regulations. 45 C.F.R. 303.2 requires the child support application process to be accessible to the public. This administrative regulation specifies the process by which an individual may apply for child support services, the scope of services available, and the process for an intergovernmental[~~interstate~~] case.

Section 1. Child Support Enforcement Case Types. (1) Kentucky Transitional Assistance Program (K-TAP) or Kinship Care.

(a)1. An applicant for, or recipient of, K-TAP or Kinship Care shall make an assignment of rights to the state for support that the applicant or recipient may have from any other person in accordance with KRS 205.720(1) and 921 KAR 2:006.

2. The assignment shall:

a. Include members of the case for whom support rights apply;

and

b. Be completed when applying for K-TAP or Kinship Care benefits using the application form incorporated by reference in 921 KAR 3:030.

(b) An applicant or recipient shall cooperate in all phases of child support activity that shall, if known, include:

1. The name of the noncustodial parent or obligor;

2. The Social Security number of the noncustodial parent or obligor;

3. Information to assist in the:

a. Location of the noncustodial parent or obligor;

b. Enforcement of a child support order; or

c. Review or modification of a child support order;

4. Establishment of:

a. Paternity, if paternity has not been established; and

b. An assigned support obligation;

5. Enforcement of:

a. An assigned support obligation; and

b. A spousal support order if the cabinet is collecting for a child who resides with the spouse or former spouse; and

6. Forwarding any child support payment received to the cabinet's centralized collection unit.

(2) Foster Care.

(a) The CSEP shall collect and disburse child support on behalf of a child for whom:

1. The state is making a foster care maintenance payment as required by 42 U.S.C. 657 and an assignment of rights has been made; or

2. The cabinet has custody, and there is an order for the child's parent or parents to pay child support to the cabinet pursuant to KRS 610.170.

(b) The child's benefit worker with responsibility for the foster care child shall:

1. Cooperate with the CSEP;

2. Review and approve a foster care child support referral;

3. Complete a change of status if a change occurs that relates to the child support process; and

4. Forward to the CSEP a copy of the child support court documents.

(c) If a child with special needs is adopted in accordance with 922 KAR 1:100 and reenters the custody of the cabinet, the cabinet shall:

1. Determine that good cause exists in accordance with Section 2(3) of this administrative regulation; or

2. Establish a child support obligation if:

a. A child with special needs adopted in accordance with 922 KAR 1:100 has reentered the custody of the cabinet due to the child's maltreatment or abandonment; and

b. The commissioner or designee recommends the establishment of child support.

(3) Medicaid only.

(a) If a Medicaid-only referral is made, the CSEP shall obtain the following information, if available:

1. Medicaid case number;

2. Name of the noncustodial parent or obligor;

3. Social Security number of the noncustodial parent or obligor;

4. Name and Social Security number of the child;

5. Home address of the noncustodial parent or obligor;

6. Name and address of the noncustodial parent or obligor's place of employment; and

7. Whether the noncustodial parent has a health insurance policy and, if so, the policy name and number and name(s) of the person(s) covered.

(b) An application for Medicaid shall include an assignment of rights for medical support, pursuant to 907 KAR 1:011, Section 9, which shall be completed by using the application form incorporated by reference in 921 KAR 3:030.

(c) Except for a custodial parent who is pregnant or in her postpartum period, pursuant to 907 KAR 1:011, a custodial parent shall cooperate in all phases of medical support activity.

(d) A Medicaid-only recipient desiring full child support services, in addition to the medical support services, shall complete and submit to the CSEP the CS-140, Assignment of Rights and Authorization to Collect Support.

(4) Nonpublic Assistance.

(a) In accordance with KRS 205.721, the CSEP shall make child support services available to any individual who:

1. Assigns rights for medical support only;

2. Applies for services pursuant to paragraph (c) of this subsection; or

3. Has been receiving child support services as a public assistance recipient and is no longer eligible for public assistance.

(b) The CSEP shall notify the family no longer eligible for public assistance, within five (5) working days, that child support services shall continue unless the CSEP is notified to the contrary by the family.

(c) Application Process for a Nonpublic Assistance Individual.

1. Upon the request of a nonpublic assistance applicant, the CSEP shall give an application packet to the applicant.

2. If the request is:

a. Made in person, the packet shall be provided the same day; or

b. Not made in person, the packet shall be sent to the applicant within five (5) working days of the request.

3. The application packet shall include the:

a. CS-33, Non-K-TAP Application;

b. CS-168, Application for Direct Deposit; and

c. CS-11, Authorization and Acknowledgement of No Legal Representation.

4. In order to receive child support services, the applicant shall complete and return the:

a. CS-33, Non-K-TAP Application; and

b. CS-11, Authorization and Acknowledgement of No Legal Representation.

(d) Except for a[~~putative father and~~] location-only case, services provided to a nonpublic assistance client through the CSEP shall be those services listed in Section 2 of this administrative regulation.

(e) If a case involves a putative father, services provided shall be those identified in Section 2(1)[~~(b) and (c)~~] of this administrative regulation.

(f) The CSEP shall obtain the following information from a nonpublic assistance applicant, if available:

1. Name, date of birth, and Social Security number of the child;

2. Name of the custodial and noncustodial parent or obligor;

3. Social Security number of the custodial and noncustodial parent or obligor;

4. Date of birth of the custodial and noncustodial parent or obligor;

5. Home address or last known address of the custodial and noncustodial parent or obligor; and

6. Name and address of the custodial and noncustodial parent's or obligor's employer or last known employer.

Section 2. General Services and Good Cause for All Case Types. (1) The CSEP shall provide child support services for a case type described in this administrative regulation in accordance with 42 U.S.C. 654. The services shall include:

(a) Location of the noncustodial parent or obligor;

(b) Location of the custodial parent for establishment of paternity;

(c) Establishment of paternity based upon the receipt of either:

1. A court order; or

2. An affidavit from the Office of Vital Statistics that a signed, notarized voluntary acknowledgement of paternity has been registered;

(d) Establishment of a child support or medical support obligation by:

1. Petitioning the court or administrative authority to establish child support pursuant to the Kentucky Child Support Guidelines; and

2. Petitioning the court or administrative authority to include private health insurance pursuant to 45 C.F.R. 303.31(b)(1) in new or modified court or administrative orders for support; or

3. Petitioning the court or administrative authority to include cash medical support in new or modified orders until such time as health insurance that is accessible and reasonable in cost, as defined in KRS 403.211(8)(a) and (b), becomes available;

(e) Enforcement of a:
1. Child support or medical support obligation; and
2. Spousal support obligation if the:
a. Client is the spouse or ex-spouse;
b. Child lives with the spouse or ex-spouse; and
c. Cabinet is collecting support on behalf of the child;
(f) Review and modification of an assigned support obligation in accordance with 921 KAR 1:400;
(g) Collection and disbursement of current and past-due support payments resulting from an assigned support obligation, less an annual twenty-five (25) dollar fee assessed against a custodial parent who has never received assistance, as defined in 42 U.S.C. 654(6)(b)(ii), during each Federal fiscal year in which $500 has been disbursed for the case; and
(h) Submit application to health plan administrator to enroll the child if the parent ordered to provide health insurance coverage is enrolled through the insurer and has failed to enroll the child.
(2) The CSEP shall open a case and determine needed action and services within twenty (20) calendar days of receipt of a:
(a) Referral from the public assistance agency;
(b) Foster care referral; or
(c) Nonpublic assistance application in accordance with Section 1(4)(c) of this administrative regulation.
(3) Good cause.
(a)1. If an applicant or client states that good cause for noncooperation exists, the applicant or client shall have the opportunity to establish a claim pursuant to 921 KAR 2:006.
2. Evidence for determination of good cause shall be pursuant to 921 KAR 2:006.
3. For a foster care child, good cause for nonenforcement of child support shall be determined to exist if evidence and criteria are met pursuant to 921 KAR 2:006 or 922 KAR 1:530.
(b) If the CSEP has reason to believe an allegation of child maltreatment or domestic violence pursuant to KRS 205.730(1), the CSEP shall not attempt location, establishment, modification, or enforcement of an assigned support obligation.

Section 3. Parent Locator Service and Associated Fee for Service. (1) Unless the cabinet has reason to believe an allegation of child maltreatment or domestic violence pursuant to KRS 205.730(1) or 921 KAR 2:006, Section 24, location shall be attempted for a:
(a) Public assistance case referred to the CSEP; or
(b) Nonpublic assistance case for which child support services are being provided.
(2) The CSEP shall attempt to locate a noncustodial parent or obligor and the noncustodial parent's or obligor's employer, sources of income, assets, property, and debt, if necessary, for a public assistance case or nonpublic assistance case assigned to the CSEP pursuant to KRS 205.712 and 205.730(5) 45 C.F.R. 303.69 or 303.70.
(3) In accordance with KRS 205.730(4), location services shall be provided in a parental kidnapping case.
(4) The CSEP shall provide location services to a putative father in accordance with KRS 205.730(2) and (4).

Section 4. Intergovernmental[~~Interstate~~] Process for Child Support Enforcement Services. In accordance with KRS 205.712, 407.5101-407.5902, and 45 C.F.R. 303.7, the CSEP shall:
(1) Extend to an intergovernmental IV-D[~~interstate~~] child support case the same services available to an intrastate case; and
(2) Provide a responding[~~an~~] agency[~~in a responding state~~] with sufficient and accurate information and documentation on the appropriate intergovernmental[~~interstate~~] transmittal forms, the:
(a) CS-98, General Testimony;
(b) CS-99, Affidavit in Support of Establishing Paternity; and
(c) CS-100, Uniform Support Petition.

Section 5. Public Awareness. The effort, pursuant to KRS 205.712(2)(g), to publicize the availability of the CSEP's services and encourage their use may include:
(1) Public service announcements;
(2) Posters;
(3) Press releases;
(4) Videos;
(5) Annual reports;
(6) Newsletters;
(7) Mail inserts;
(8) Pamphlets;
(9) Letters; and
(10) Internet.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "CS-11, Authorization and Acknowledgement of No Legal Representation", edition 10/12[~~4/10~~];
(b) "CS-33, Non-KTAP Application", edition 10/12[~~4/10~~];
(c) "CS-98, General Testimony", edition 10/12[~~1/09~~];
(d) "CS-99, Affidavit in Support of Establishing Paternity", edition 1/09;
(e) "CS-100, Uniform Support Petition", edition 1/09;
(f) "CS-140, Assignment of Rights and Authorization to Collect Support", edition 10/12[~~4/10~~]; and
(g) "CS-168, Application for Direct Deposit", edition 1/09.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Income Support, Child Support Enforcement, 730 Schenkel Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

STEVEN P. VENO, Deputy Commissioner
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: July 13, 2012
FILED WITH LRC: July 13, 2012 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2012, in the Public Health Board Room, Second Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 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 canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business August 31, 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 40601, phone 502-564-7905, fax 502-564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mary W. Sparrow
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation specifies the process by which an individual may apply for child support services, the scope of services available, and the process for an intergovernmental case.
(b) The necessity of this administrative regulation: This administrative regulation is necessary provide the procedures for child support application, the scope of child support services available and to outline the procedures for establishing an intergovernmental case in accordance with 42 U.S.C. 651-654, 657, 663,666 and 45 C.F.R. 302 and 303.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The Cabinet has responsibility under KRS 194A.050(1), 205.721, 205.795, 405.452, and by virtue of applying for federal funds under 42 U.S.C. 651-654, 657, 663 and 666, to specify child support services available to intergovernmental cases.
(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 stat-

utes by establishing procedures utilized by the Cabinet for child support services in intergovernmental processes for child support.

(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 revises existing language from "Interstate" to "Intergovernmental." The amendment was federally mandated in the Final Rule: Intergovernmental Child Support, published in the Federal Register on July 2, 2010, issued by Action Transmittal 10-06.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to incorporate corrections to the regulation and to update state forms used in accordance with KRS Chapters 405 and 407.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by clarifying that child support services are available for both Intrastate and Intergovernmental cases.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the administration of the statutes through critical corrections to the language in the regulation and incorporated forms.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The updates in this regulation will affect participants in the Child Support Enforcement Program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The incorporated corrections have been updated to reflect changes in the wording from "Interstate" to "Intergovernmental" and to incorporate other technical corrections.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no fees and no increase in funding for this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The updated language, which mirrors federal regulations, will provide clarity to participants in the Child Support Enforcement Program.

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

(a) Initially: There are no fees and no increase in funding for this administrative regulation.

(b) On a continuing basis: There are no fees and no increase in funding for this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding include thirty-four (34) percent state general and restricted funds and sixty-six (66) percent federal funds under Title IV-D of the Social Security Act.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fees or funding as a result of this amended 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 applied, as this administrative regulation will be applied in a like manner on a statewide basis.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) 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 Cabinet for Health and Family Services and the Department for Income Support, Child Support Enforcement Program are impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 205.705, 205.710-205.800, 205.992, 213.046(4), 403.211, 405.430(5), 405.520, 405.467, 406.021, 406.025, 407.5101-407.5902, 610.170, 45 C.F.R. 301.1, 302.30, 302.31, 302.33-302.36, 302.50, 302.65, 302.80, 303.2, 303.3-303.15, 303.30-303.31, 303.69, 303.70, 42 U.S.C. 651-654, 657, 663, 666.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The Child Support Enforcement program has been operational since 1975 and does not directly generate any revenue. The amendment to this administrative regulation will not generate any additional revenue in the first year.

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Action Transmittal 10-06, issued the Final Rule: Intergovernmental Child Support changes to 45 Code of Federal Regulations Parts 301, 302, 303, 305, and 308.

2. State compliance standards. KRS 194A.050(1), 205.795 and 405.520.

3. Minimum or uniform standards contained in the federal mandate. CSE has mirrored the changes outlined in the final rule in 921 KAR 1:001 and 921 KAR 1:380.

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. Not applicable.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Income Support
Child Support Enforcement
(Amendment)

921 KAR 1:400. Establishment, review, and modification of child support and medical support orders.

RELATES TO: KRS 205.710-205.800, 205.990, 213.046(4), (9), 403.160(1), (2)(a), (b), 403.210-403.240, 405.430, 405.440, 405.991, 406.021, 406.025, 454.220, 45 C.F.R. 302.50, 302.56, 302.80, 303.4, 303.8, 303.30-303.32, 42 U.S.C. 651-669B

STATUTORY AUTHORITY: KRS 194A.050(1), 205.795, 405.520

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS

205.795 and 405.520 authorize the secretary of the cabinet to promulgate and adopt administrative regulations to operate the Child Support Enforcement Program in accordance with federal law and regulations. This administrative regulation establishes the requirements for the establishment, review, and modification of child support and medical support orders.

Section 1. Support Obligation Shall be Established. (1) A child support and medical support obligation shall be established by:(a) A court of competent jurisdiction; or

(b) An administrative order.

(2) The obligation shall be the amount as established administratively or judicially, as computed by the:

(a) CS-71, Commonwealth of Kentucky Worksheet for Monthly Child Support Obligation; or

(b) CS-71.1, Commonwealth of Kentucky Worksheet for Monthly Child Support Obligation Exception.

(3) The amount determined shall be the amount to be collected. Any support payment collected shall reduce the amount of the obligation dollar for dollar.

(4) For a public assistance case and a nonpublic assistance case for which child support services are being provided, the cabinet shall use state statutes and legal process in establishing the amount of a child support and medical support obligation, including KRS 403.211, 403.212, 405.430 and 454.220.

(5) In addition to the deductions specified in KRS 403.212(2), the deduction for a prior-born child residing with a parent for an administratively or judicially imputed child support obligation, as specified in KRS 403.212(2)(g)3, shall be calculated by using:

(a) That parent's portion of the total support obligation as indicated on the worksheet, if:

1. There is a support order; and

2. A copy of the child support obligation worksheet is obtained; or

(b) 100 percent of the income of the parent with whom the prior born child resides, if:

1. There is no support order;

2. There is a support order, but no support obligation worksheet; or

3. A worksheet cannot be obtained.

(6) In accordance with 45 C.F.R. 303.4(d), within ninety (90) calendar days of locating a noncustodial parent, or obligor, the cabinet shall:

(a) Complete service of process; or

(b) Document an unsuccessful attempt to serve process.

(7) If service of process has been completed, the cabinet shall, if necessary:

(a) Establish paternity;

(b) Establish a child support or medical support obligation; or

(c) Send a copy of any legal proceeding to the obligor and obligee within fourteen (14) calendar days of issuance.

(8) If a court or administrative authority dismisses a petition for support without prejudice, the cabinet shall, at that time, determine when to appropriately seek an order in the future.

Section 2. Administrative Establishment. (1) The cabinet may administratively establish a child support obligation or medical support obligation, or both if:

(a) Paternity is not in question;

(b) There is no existing order of support for the child;

(c) The noncustodial parent, or obligor, resides or is employed in Kentucky; and

(d) The noncustodial parent's, or obligor's, address is known.

(2) To gather necessary information for administrative establishment, as appropriate the cabinet shall:

(a) Send to the custodial parent or nonparent custodian forms:

1. CS-133, Custodial Parent Information Request;

2. CS-132, Child Care Expense Verification; and

3. CS-136, Health Insurance Information Request;

(b) Send to the custodial parent the CS-65, Statement of Income and Resources;

(c) Send to the noncustodial parent forms:

1. CS-64, Noncustodial Parent Appointment Letter;

2. CS-65, Statement of Income and Resources;

3. CS-132, Child Care Expense Verification; and

4. CS-136, Health Insurance Information Request;

(d) Send a CS-130, Income Information Request, to the employer of the:

1. Custodial parent; or

2. Noncustodial parent, or obligor;

(e) Issue a CS-84 Administrative subpoena In accordance with KRS 205.712(2)(k) and (n), if appropriate; and

(f) Prior to initiating a request for information from a certified consumer credit reporting agency, send an obligor a CS-93, Advance Notice of Intent to Request Full Credit Report in accordance with KRS 205.7685.

(3) The cabinet shall determine the monthly support obligation in accordance with the child support guidelines as contained in KRS 403.212 or subsection (4) of this section.

(4) In a default case, the cabinet shall set the obligation based upon the needs of the child or the previous standard of living of the child, whichever is greater in accordance with KRS 403.211(5).

(5) After the monthly support obligation is determined, the cabinet shall serve a CS-66, Administrative Order/Notice of Monthly Support Obligation, in accordance with the requirements of KRS 405.440 and 42 U.S.C. 654(12).

(6) The cabinet shall not administratively modify an obligation that is established by a court of competent jurisdiction, except as provided in subsection (7) of this section.

(7) If support rights are assigned to the cabinet, the cabinet shall direct the obligor to pay to the appropriate entity by modifying the order:

(a) Administratively upon notice to the obligor or obligee; or

(b) Judicially through a court of competent jurisdiction.

Section 3. Review and Adjustment of Child Support and Medical Support Orders. (1) In accordance with KRS 405.430(6), the cabinet may modify the monthly support established. Every thirty-six (36) months the cabinet shall notify each party subject to a child support order of the right to request a review of the order.

(2) Pursuant to 45 C.F.R. 303.8, the cabinet shall conduct a review upon the request of:

(a) Either parent;

(b) The state agency with assignment; or

(c) Another party with standing to request a modification.

(3) In accordance with 45 C.F.R. 303.8(e), within 180 days of receiving a request for review or of locating the nonrequesting parent, whichever occurs later, the cabinet shall:

(a) Conduct the review;

(b) Modify the order; or

(c) Determine the circumstances do not meet criteria for modification.

(4) The cabinet shall provide notification within fourteen (14) calendar days of modification or determination to each parent or custodian, if appropriate, and legal representatives by issuing a CS-79, Notification of Review Determination, in accordance with KRS 403.213.

(5) In accordance with subsections (2) and (3) of this section, the cabinet or the cabinet's designee shall seek modification of an administrative or judicial support order to include medical support on behalf of the child as defined in KRS 403.211(7)(a) through (d).

(6) Retroactive modification of a child support order shall occur in accordance with KRS 403.211(5) and 403.213(1).

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "CS-64, Noncustodial Parent Appointment Letter", edition 3/10;

(b) "CS-65, Statement of Income and Resources", edition 3/10;

(c) "CS-66, Administrative Order/Notice of Monthly Support Obligation", edition 3/10;

(d) "CS-71, Commonwealth of Kentucky, Worksheet for Monthly Child Support Obligation", edition 3/10;

(e) "CS-71.1, Commonwealth of Kentucky, Worksheet for Monthly Child Support Obligation Exception", edition 3/10;

(f) "CS-79, Notification of Review Determination", edition 3/10;

(g) "CS-84, Administrative Subpoena", edition 10/12[~~3/09~~];

(h) "CS-93, Advance Notice of Intent to Request Full Credit

Report", edition 3/10;

(i) "CS-130, Income Information Request", edition 3/10;

(j) "CS-132, Child Care Expense Verification", edition 3/10;

(k) "CS-133, Custodial Parent Information Request", edition 3/10; and

(l) "CS-136, Health Insurance Information Request", edition 3/10.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Income Support, Child Support Enforcement, 730 Schenkel Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

STEVEN P. VENO, Deputy Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 13, 2012

FILED WITH LRC: July 13, 2012 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2012, in the Public Health Board Room, Second Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 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 canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business August 31, 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 40601, phone 502-564-7905, fax 502-564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mary W. Sparrow

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the establishment, review, and modification of child support and medical support orders.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement requirements for the establishment, review, and modification of child support and medical support orders.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Cabinet has responsibility under KRS 194A.050(1), 205.795, 405.520, and by virtue of applying for federal funds under 42 U.S.C. 651-669 to establish, review, and modify support obligations. This administrative regulation sets forth such procedures and processes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assist in the effective administration of the statutes by establishing procedures used by the Cabinet to establish, review, and modify child support and medical support orders.

(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 CS-84 is a replica of a federal form. The CS-84 has been revised to replicate the changes made to the federal version of the form.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to keep CSE forms current with the federal forms.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by clarifying the criteria used by the Cabinet in establishing, reviewing, and modifying child support and medical support orders.

(d) How the amendment will assist in the effective administration of the statutes: CSE staff will be able to utilize the Kentucky replica of a federal form to be in compliance with federal changes to that form.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The updates in this regulation will affect the Child Support Enforcement Program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The revised form will be migrated to our computer system for CSE staff to generate.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no fees and no increase in funding for this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Child Support Enforcement Program will utilize a form that is consistent with and compliant to federal revisions to the same form.

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

(a) Initially: There are no fees and no increase in funding for this administrative regulation.

(b) On a continuing basis: There are no fees and no increase in funding for this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of the funding include state general funds and federal funds under 42 U.S.C. 401-419, Title IV-D of the Social Security Act.

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) 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 Cabinet for Health and Family Services and the Department for Income Support, Child Support Enforcement Program are impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 205.710-205.800, 205.990, 213.046(4), (9), 403.160(1), (2)(a), (b), 403.210-403.240, 405.430, 405.440, 405.991, 406.021, 406.025, 454.220, 45 C.F.R. 302.50, 302.56, 302.80, 303.4, 303.8, 303.30-303.32, 42 U.S.C. 651-669B.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The Child Support Enforcement program has been operational since 1975 and does not directly generate any revenue. The amendment to this administrative regulation will not generate any additional revenue in the first year.

(b) How much revenue will this administrative regulation gen-

erate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The Child Support Enforcement program has been operational since 1975 and does not directly generate any revenue. The amendment to this administrative regulation will not generate any additional revenue in the subsequent years

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

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

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
Department for Income Support
Child Support Enforcement
(Amendment)

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

RELATES TO: KRS 13B.010(2), 15.055, 67A.620, 95.620(1), 95.878, 131.570, 161.700(1), 186.570(2), 205.594, 205.595, 205.710-205.802, 237.110(4), 403.211-403.215, 405.060(2), (3), 405.405-405.991, 407.5101-407.5902, 427.120, 427.125, 31 C.F.R. 285.1 and, 285.3, 45 C.F.R. 302.32-302.36, 302.60-302.80, 303.3, 303.6, 303.31, 303.32, 303.35, 303.70, 303.72, 303.100-303.102, 303.104, 15 U.S.C. 1673, 42 U.S.C. 652, 654, 659, 664, 666(a)(1)-(4), (6)-(12), (14)- (19), (b), and, (c)

STATUTORY AUTHORITY: KRS 15.055(2), 186.570(2), 194A.050(1), 205.712(2)(o), 205.712(16), 205.745(9), 205.7685(3), 205.795, 405.411(2), 405.520, 42 U.S.C. 652, 653, 654, 656, 659, 666(a), (b), and, (c), 669A

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 42 U.S.C. 666 requires states to have laws that prescribe procedures to improve effectiveness of child support enforcement. KRS 205.712(2)(o) requires the Cabinet for Health and Family Services to collect and enforce child support obligations and authorizes the cabinet to promulgate administrative regulations to implement its duties. This administrative regulation establishes procedures for collection and enforcement of child support.

Section 1. Definitions. "Lump sum payment of any kind" means a lump sum payment of earnings as defined in KRS 427.005.

Section 2. Collection. (1) Income withholding shall be used for the collection of a support obligation or health insurance coverage in an order being enforced by the Child Support Enforcement (CSE) program.

(2) The cabinet shall notify an employer or other income source of a request for income withholding by sending, certified mail, returned receipt requested, the CS-89, Income Withholding for Support, and CS-72, National Medical Support Notice:

(a) Within fifteen (15) calendar days of a request for income withholding; or

(b) Within two (2) working days after entry of an obligor into the State Directory of New Hires.

(3) The employer or other income source shall:

(a) Implement income withholding no later than the first pay period that occurs after fourteen (14) working days following the date of the CS-89; and

(b) Transfer the CS-72 to the employer's health plan administrator within twenty (20) business days after receipt of the notice.

(4) The employer or other income source, in accordance with KRS 405.465(4) and (6)(a), may deduct the sum of one (1) dollar for each payment made pursuant to the order.

(5) The total amount to be withheld may not exceed the maximum amount allowed under 15 U.S.C. 1673(b).

(6) In the case of an initial withholding, the cabinet shall send the obligor a copy of the CS-89 in order to notify the obligor that the income withholding:

(a) May be contested by requesting an administrative hearing pursuant to 921 KAR 1:430, in accordance with KRS 405.467(4); and

(b) Shall apply to the current and any subsequent employer.

(7) The health plan administrator shall notify the obligor and the cabinet of the health insurance coverage within forty (40) working days of receipt of the CS-72.

(8) If an obligor terminates employment, the employer or other income source shall notify the cabinet of the obligor's last known address and name of the new employer, if known, in accordance with KRS 405.465(5).

(9) An obligor shall inform the cabinet of any changes in:

(a) A current employer or source of income;

(b) Access to health insurance; and

(c) Residential or mailing address.

(10) If an obligor transfers or assigns income or income-producing property after receipt of notification of a child support obligation, the cabinet shall take action pursuant to KRS 405.060.

(11) If an arrearage only amount is subject to withholding, the arrearage payment and frequency of payment shall be equal to the payment and frequency last designated by court or administrative order.

(12) The employer or other income source shall forward:

(a) The support obligation payment to the state disbursement unit in the child support agency within seven (7) working days from the date an amount is withheld; or

(b) The medical insurance premium to the health insurance carrier or notify the cabinet prior to payment if more than one (1) option is available under a plan within twenty (20) business days.

(13) The employer or other income source shall include on the transmittal to the cabinet the obligor's:

(a) Name;

(b) Social Security number; and

(c) Cabinet-assigned identification number.

(14) The employer or other source of income shall not be required to change payroll frequency but shall withhold:

(a) At least once monthly; and

(b) May combine withheld amounts from more than one (1) obligor's income in a single payment to the cabinet, if the amount attributable to each obligor is identified by:

1. Name;

2. Social Security number; and

3. Cabinet-assigned identification number.

(15) (a) An employer with twenty (20) or more employees shall provide written notification of a lump sum payment of any kind of $150 or more to be made to an employee who is currently under an income withholding order, in accordance with KRS 405.465.

1. The written notice to the cabinet shall include the following:

a. Name of the employee;

b. Social Security number of the employee;

c. Amount of the lump sum payment; and

d. Intended payment date; and

2. The notice may include multiple employees on one (1) written notification if the information in accordance with this subparagraph 1 of this paragraph is provided for each employee.

(b) Upon receipt of notification of a lump sum payment, Child Support Enforcement shall determine if the employee owes an arrearage on a support obligation enforced by the cabinet.

(c) If the employee owes no arrearage, Child Support Enforcement or its designee may notify the employer to release the lump sum payment to the employee.

(d) If the employee owes an arrearage, pursuant to paragraph (b) of this subsection, Child Support Enforcement or its designee shall initiate:

1. A court order to the employer in accordance with KRS 405.465; or

2. An administrative order in accordance with KRS 405.470.

(e) If Child Support Enforcement or its designee does not contact the employer, the employer shall:

1. Hold the lump sum for thirty (30) calendar days, in accordance with KRS 405.465(6)(a), from the projected date of its release; and

2. Release the lump sum payment to the employee after the 30th calendar day, unless the employer has received from Child Support Enforcement or its designee a court order or an administrative order to withhold any portion of the lump sum payment.

(16) If an obligor receives unemployment compensation benefits, the cabinet shall:

(a) Through an agreement with the Education Cabinet, Office of Employment and Training, submit a CS-76, Unemployment Insurance Notice of Withholding, to the Department of Unemployment Insurance within the Education Cabinet to collect a child support payment from an obligor receiving unemployment compensation.

(b) Notify an obligor with a CS-73, Unemployment Insurance Letter, along with a copy of the CS-76, Unemployment Insurance Notice of Withholding that:

1. Current child support obligation or delinquency is owed;

2. The cabinet has completed a CS-76 to order withholding of:

a. Fifty (50) percent of the unemployment benefit; or

b. The amount of the assigned support obligation, whichever is less; and

3. The obligor may contest the withholding by requesting an administrative hearing as specified in 921 KAR 1:430.

Section 3. Support Collection by Methods Other than Collection through Income Withholding. (1) Federal income tax refund offset and federal administrative offset.

(a) A public assistance case shall qualify for offset if there is:

1. A court-ordered or administratively-established support obligation;

2. An assignment of support to the cabinet;

3. An arrearage of at least $150; and

4. Cabinet verification of the accuracy of the obligor's name and Social Security number.

(b) A nonpublic assistance case, for which the cabinet is providing services, involving past-due child support, a specific dollar amount of medical support, or spousal support shall qualify for offset if the:

1. Cabinet is enforcing a court-ordered or administratively-established support obligation;

2. Cabinet verifies accuracy of the obligor's name and Social Security number;

3. Nonpublic assistance arrearage owed is equal to or greater than $500, exclusive of fees, court costs, or other non-child support debt; and

4. Cabinet has the following:

a. A copy of the current support order;

b. A copy of the payment record; and

c. The custodial parent's last known address.

(c)1. If a case is submitted for federal tax refund offset, the case may be subject to federal administrative offset of nonexempt federal payments pursuant to 42 U.S.C. 664 and 31 C.F.R. 285.1 and 285.3.

2. Nonexempt federal payments shall be denied to individuals owing a child support arrearage as defined in paragraphs (a) and (b) of this subsection.

(d) An Advance Notice of Intent to Collect Past Due Support, Form CS-122, shall be sent to the obligor of the intent to intercept the tax refund and the administrative offset to be applied to the obligor's account.

1. The notice shall inform noncustodial parents:

a. Of their right to contest the fact that past due support is owed or the amount of past due support by requesting an administrative hearing;

b. Of the procedures and timeframe for contacting CSE to request an administrative hearing;

c. That the hearing shall be conducted by the submitting state unless the noncustodial parent requests the hearing be conducted by the state with the order upon which the referral for offset is based; and

d. That, in the case of a joint return, the Secretary of the U.S. Treasury shall notify the noncustodial parent's spouse at the time of offset regarding the steps to take to protect the share of the refund which may be payable to that spouse.

(2) State income tax refund offset.

(a) A public assistance case and nonpublic assistance case shall qualify for offset if there is:

1. A court-ordered or administratively-established support obligation;

2. An assignment of support to the cabinet or the Child Support Enforcement program is providing services involving past due child support, a specific dollar amount of medical support, or spousal support;

3. An arrearage of at least $150; and

4. Cabinet verification of the accuracy of the obligor's name and Social Security number.

(b) In accordance with KRS 131.570, an advance written notice shall be sent to the obligor that he may contest the accuracy of a past due amount by requesting an administrative hearing as specified in 921 KAR 1:430.

(3) Tort claim settlements and state administrative offset. The cabinet shall:

(a) Identify a child support case for state administrative offset, including tort claim settlements, if a child support case meets the criteria specified in subsection (2)(a) or (b) of this section; and

(b) Notify the Finance and Administration Cabinet to offset administrative payments, including tort claim settlements, in accordance with KRS 205.712(17), for a case identified in paragraph (a) of this subsection.

(4) Financial Institution Data Match (FIDM). The cabinet shall:

(a) Use the following criteria to identify a case for seizure of assets:

1.a. Assignment of support is made to the cabinet; or

b. Child Support Enforcement program is providing support services; and

2. The obligor owes past-due support[~~has failed to make child support payments~~] in an amount equal to or greater than one (1) month's support obligation;[~~support payable for one (1) month.~~]

(b) Issue a CS-68, Order to Withhold and Deliver, and CS-69, Answer to Withhold and Deliver, to a financial institution holding the obligor's account or accounts;

(c) Issue a CS-68 and CS-121, Noncustodial Parent's Answer to Withhold and Deliver, to the obligor within two (2) working days:

1. After both of the forms specified in paragraph (b) of this subsection are issued to the financial institution; and

2. To notify the obligor that the funds in the account with the financial institution may be retained by requesting an administrative hearing to contest the Order to Withhold and Deliver in accordance with 921 KAR 1:430;

(d) Notify an obligor that to retain the funds in the account with the financial institution, an obligor shall take one (1) of the following actions within twenty (20) calendar days from the date of receipt of a CS-68:

1. Pay the total arrearage;

2. Request and administrative hearing to contest the CS-68; or

3. Post a bond satisfactory to the cabinet; and

(e) After an administrative hearing, if a case does not qualify for the withhold and deliver process, send a CS-70, Release of Order to Withhold and Deliver to:

1. The obligor; and

2. The financial institution.

(5) If a seizure of assets request is identified, as specified in subsection (4)(a) of this section, and is initiated from outside the commonwealth as a result of a FIDM, pursuant to 42 U.S.C. 666(a)(17), the cabinet shall comply with KRS 205.712, 407.5305, and 407.5507 to issue:

(a) A CS-68 and a CS-69 to a financial institution holding the obligor's account or accounts;

(b) A CS-68 and a CS-121, Noncustodial Parent's Answer to Withhold and Deliver, to the obligor within two (2) working days after both of the forms specified in paragraph (a) of this subsection are issued to the financial institution; and

(c) A CS-70 to the financial institution. if the initiating state's request is withdrawn.

Section 4. Enforcement Actions. (1) Liens.

(a) The cabinet shall file a lien on an obligor's interest in personal or real property, in accordance with KRS 205.745, if:

1. The obligor owes an arrearage equal to or greater than one (1) month's obligation;

2. The child support has been assigned to the cabinet;

3. The property has been identified and located; and

4. The value of the property exceeds the costs related to filing the lien.

(b) To file a lien, the cabinet shall.

1. Issue a CS-85, Notice of Lien, for property within or outside Kentucky in accordance with KRS 205.745 or 205.7785; and

2. Provide a CS-119, Noncustodial Parent's Notice of Lien, along with a copy of the CS-85 to the obligor notifying him that:

a. The obligor may contest the lien as specified in 921 KAR 1:430;

b. A transfer of property in order to avoid payment shall be considered an act of fraud, in accordance with KRS 405.060(2); and

c. If the obligor makes full payment of the arrearage, including interest, penalties, and fees, a CS-120, Release of Lien, shall be provided to the obligor.

(c) To release a lien, the cabinet shall provide a CS-120, Release of Lien, to the obligor.

(2) License and certificate denial, suspension, or revocation.

(a) If an obligor owes an arrearage equal to or greater than six (6) months of an assigned support obligation or fails to comply with a subpoena or warrant relating to paternity or child support proceedings, as established in KRS 205.712(9):

1. The cabinet shall forward the name of the individual to a board of licensure or board of certification for the notification of the denial, revocation, or suspension of a driver's license, professional license or certification, occupational license or certification, recreational license, or sporting license.

2. The denial or suspension shall remain in effect until:

a. The obligor makes full payment of the arrears;

b. Payments on the past due child support are made in accordance with a court order, an administrative order, or Payment Agreement, CS-78;

c. The obligor complies with the subpoena or a warrant relating to paternity or child support proceedings has been removed;

d. The obligor provides supporting documentation of extenuating circumstances that is accepted by the cabinet; or

e. The appeal of the denial or suspension is upheld and the license is reinstated.

3. The cabinet shall send to the obligor a CS-44, Notice of Intent to Request Denial or Suspension, which includes:

a. A section for an Answer to Notice of Intent providing the obligor with notice of the obligor's right to request an administrative hearing contesting the action as specified in 921 KAR 1:430; and

b. Notification that the CS-63, Notice to Licensing/Certification Board or Agency shall be rescinded if an action specified in paragraph (a)2 of this subsection has been taken.

4. The cabinet shall send to the issuing agency or board of licensure or certification a CS-63, if an action in paragraph (a)2 of this subsection has not been taken.

5. The cabinet shall send to the issuing agency or board of licensure or certification a CS-63, within twenty (20) calendar days of the date of administrative hearing decision, if an administrative hearing results in a finding that the case qualifies for:

a. A license or certificate denial;

b. Suspension; or

c. Revocation; and

6. The cabinet shall Notify the issuing board or agency that the obligor is no longer deemed by the cabinet to be subject to denial, suspension, or revocation, if the obligor, in accordance with KRS 205.712(11):

a. Has eliminated the child support arrearage;

b. Is making payments on the child support arrearage in accordance with a court or administrative order; or

c. Complies with a subpoena or warrant relating to paternity or child support proceedings.

(b) If an obligor owes an arrearage equal to or greater than one (1) year's obligation, the cabinet shall take action against a license to carry a concealed deadly weapon as specified in KRS 237.110(4).

(3) Vehicle booting.

(a) If an obligor owes an arrearage equal to or greater than six (6) months obligation of an assigned support obligation and fails to comply with a subpoena or warrant relating to a child support proceeding, the cabinet may enforce a lien on a vehicle registered to the obligor by immobilization with a vehicle boot as established in KRS 205.745(9).

(b) The cabinet shall:

1. Verify with the Department of Vehicle Regulation that the vehicle identification number for the vehicle to be booted is register in the obligor's name;

2. Verify the vehicle to be booted is solely owned by the obligor, co-owned by the obligor and current spouse, or owned by a business in which the obligor is the sole proprietor;

3. Send a notice of intent to the obligor, unless there is reason to believe that the obligor will leave town or hide the vehicle;

4. File a lien in the county where the vehicle is kept; and

5. Set a target date for booting the vehicle, if the obligor does not contact the cabinet within ten (10) days of notice to negotiate a settlement.

(c) The cabinet shall send a cancellation notice to the obligor and to the appropriate local law enforcement personnel to terminate the booting of the vehicle.

(4) Newspaper publication of a list of delinquent obligors. If an obligor owes an arrearage equal to or greater than six (6) months of an assigned support obligation or fails to comply with a subpoena or warrant relating to paternity or child support proceedings, as established in KRS 405.411, a cabinet designee under 205.712(6) may:

(a) Compile and furnish a list to a newspaper of general circulation in that county for publication; and

(b) Include the name, last known address, and the past due amount owed by the obligor.

(5) Passport denial, revocation, or limitation. If the obligor owes an arrearage of $2,500 or more, in accordance with 42. U.S.C. 652 and 654(31), the cabinet shall:

(a)1. Provide the Advance Notice to Collect Past due Support, CS-122, to the obligor of the determination to be referred for passport denial, revocation, or limitation; and

2. Include in the notice the consequences of the referral and the right to contest the action by requesting a hearing in accordance with KRS 205.712(8);

(b) Provide the U.S. Secretary of Health and Human Services the names of individuals and supporting documentation for the denial, revocation, or limitation of the obligor's passport; and

(c) Notify the Secretary of the U.S. Department of Health and Human Services that the cabinet requests the release of the passport of an obligor that had been denied if any of the following criteria are met:

1. There was an erroneous submittal of a Social Security number;

2. There is a case of mistaken identity and the cabinet has verified this information;

3. The obligor is required to pay the past due support in full;

4. The obligor provides documentation on company letterhead verifying travel for employment or business purposes and makes alternate payment arrangements acceptable to the cabinet; or

5. There are extenuating circumstances in which the reason for travel is a family emergency and supporting documentation is provided to and accepted by the cabinet.[~~(6) Delinquent list.~~

~~(a) The cabinet shall provide to the Office of the Attorney General a list of names of delinquent obligors for publication on the Internet, as established in KRS 15.055 and 205.712(16).~~

~~(b) The cabinet shall send the obligor meeting the criteria in 40 KAR 1:080 a CS-175, Notice of intent to Place Noncustodial Parent's Name on Delinquent Listing notifying him of his right to contest by requesting a hearing.~~]

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "CS-44 Notice of Intent to Request Denial or Suspension", edition 9/10;

(b) "CS-63 Notice to Licensing/Certification Board or Agency", edition 9/10;

(c) "CS-68 Order to Withhold and Deliver", edition 9/10;

(d) "CS-69 Answer to Withhold and Deliver", edition 9/10;

(e) "CS-70 Release of Order to Withhold and Deliver", edition 9/10;

(f) "CS-72 National Medical Support Notice", edition 10/12[~~9/10,~~];

(g) "CS-73 Unemployment Insurance Letter", edition 9/10;

(h) "CS-76 Unemployment Insurance Notice of Withholding", edition 9/10;

(i) "CS-78 Payment Agreement", edition 9/10;

(j) "CS-85 Notice of Lien", edition 10/12[~~9/10~~];

(k) "CS-89 Income Withholding for Support", edition 10/12[~~9/10~~];

(l) "CS-119 Noncustodial Parent's Notice of Lien", edition 9/10;

(m) "CS-120 Release of Lien", edition 9/10;

(n) "CS-121 Noncustodial Parent's Answer to Withhold", edition 9/10; and

(o) "CS-122 Advance Notice of Intent to Collect Past-Due Support", edition 10/12[~~9/10;. and~~

~~(p) "CS-175 Notice of Intent to Place Noncustodial Parent's Name on Delinquent Listing", edition 4/09~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Income Support, Child Support Enforcement, 730 Schenkel Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

STEVEN P. VENO, Deputy Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 13, 2012

FILED WITH LRC: July 13, 2012 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2012, in the Public Health Board Room, Second Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 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 canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business August 31, 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 40601, phone 502-564-7905, fax 502-564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mary W. Sparrow

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for collection and enforcement of child support.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to carry out the duties of collecting and enforcing child support mandated by state and federal law.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Cabinet has responsibility under KRS 15.055(2), 194A.050(1), 205.712(2)(o), 205.712(16), 205.745(9), 205.7685(3), 205.795, 405.411(2), 405.520, and by virtue of applying for federal funds under 42 U.S.C. 654, 659, 666 to establish procedures to collect and enforce child support obligations for recipients of IV-A, IV-E, Title XIX, and individuals who apply for IV-D services. This administrative regulation sets forth such procedures and processes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists the Childs Support Enforcement Program in the administration of the statutes by updating procedures and forms to be used for collection and enforcement services.

(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: CSE has updated the following forms in accordance with changes to the federal version of the forms: National Medical Support Notice (CS-72), Notice of Lien (CS-85), Income Withholding for Support (CS-89), and Advance Notice of Intent to Collect Past-Due Support (CS-122). The definition for past-due support has been defined, effective July 12, 2012, as an amount equal to or greater than one (1) month's obligation. CSE no longer submits a listing of delinquent obligors to the Attorney General's Office.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the forms and definition as outlined in (a).

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by outlining the processes used by the Cabinet in collection and enforcement of child support.

(d) How the amendment will assist in the effective administration of the statutes: This amendment outlines the request for information that the program is federally mandated to ask for which will improve the effectiveness of the program. This amendment will also assist in the administration of the statutes through its updates to state child support forms incorporated by reference in this regulation further improving the program effectiveness and efficiency. Past-due support as outlined in (a) will improve the efficiency and provide consistency between statute and regulation. CSE no longer submits a delinquent listing of obligors to the Attorney General's Office.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects the entities that are required to withhold earnings/income or provide medical support for a child (any employer within and outside of Kentucky who employs an individual who owes a child support obligation and financial institutions within and outside of Kentucky), Contracting Officials, Child Support Enforcement (CSE) Program, noncustodial parents, custodial parents and their children.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There will be no new responsibilities added to those already existing for any participant.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no new costs for the entities involved to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Due to the noncustodial parent and custodial parent's compliance with this amendment, the best interest of the child will be served as the child will receive the child and/or medical support obligation ordered in the most effective manner. This amendment continues child support collection and enforcement services at no additional cost.

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

(a) Initially: There are no additional fees and no increase in funding necessary for this amendment to this administrative regulation.

(b) On a continuing basis: There are no additional fees and no increase in funding necessary for this amendment to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding include state general funds and federal funds authorized and appropriated under 42 U.S.Code 651-669B, Title IV-D of the Social Security Act.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no fees and no increase in funding for this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation applies uniformly on a statewide basis.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) 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 Cabinet for Health and Family Services and the Department for Income Support, Child Support Enforcement Program are impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 U.S.C. 651 - 654, 656, 666(a)(10) and (c)(1), 667, and 669B, 45 C.F.R. 302 and 303, KRS 194A.050(1), 205.710, 205.712, 205.725, 205.735, 205.765, 205.792, 205.793, 205.795, 403.211, 403.212, 403.213, 405.430, 405.440, 405.450, 405.520, 405.550, and 405.991.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The child support program has been operational since 1975. The amendment to this administrative regulation will not generate any revenue the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The child support program has been operational since 1975. The amendment to this administrative regulation will not generate any revenue in subsequent years.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

NEW ADMINISTRATIVE REGULATIONS

OFFICE OF THE ATTORNEY GENERAL
Office of Consumer Protection
(New Administrative Regulation)

40 KAR 2:330. Mold remediation.

RELATES TO: KRS 367.83801, 367.83803, 367.83805, 367.83807

STATUTORY AUTHORITY: KRS 367.83805(1), KRS 367.83805(2), 367.83807

NECESSITY, FUNCTION AND CONFORMITY: KRS 367.83805(1) requires the Department of Law, after consultation with the Public Protection Cabinet and the Department for Public Health, to establish minimum standards for mold remediation companies that operate in the Commonwealth based on the five (5) general principles of mold remediation created by the Institute of Inspection, Cleaning and Restoration Certification (IICRC) in its publication, IICRC S520, Second Edition, Standard and Reference Guide for Professional Mold Remediation, or its successor publication. KRS 367.83805(2) authorizes customer complaints regarding compliance by mold remediation companies with 40 KAR Chapter 2 promulgated pursuant to KRS 367.83805. This administrative regulation establishes the minimum standards for mold remediation companies that operate in the Commonwealth and incorporates by reference the forms to be utilized by mold remediation companies.

Section 1. Definitions. (1) "Customer" is defined by KRS 367.83803(1).

(2) "Indoor environmental professional" means a person qualified through training, education, and experience to assess mold problems, conduct and review sampling plans and results, and evaluate and develop plans to remediate mold in structures.

(3) "Mold" is defined by KRS 367.83803(3).

(4) "Mold remediation" is defined by KRS 367.83803(4).

(5) "Mold remediation company" is defined by KRS 367.83803(5).

(6) "Postremediation evaluation" means the activity conducted by a mold remediation company to determine that the mold remediation has been performed and the mold remediation area, structure, and systems are free of mold contamination.

(7) "Postremediation verification" means sampling and analysis conducted to determine that a remediated area has been restored to a normal fungal ecology.

Section 2. Safety and Health. A mold remediation company shall:

(1) Assure that each principal and employee has appropriate training, education, and experience to perform the tasks required pursuant to this administrative regulation for mold remediation in a professional and workmanlike manner;

(2) Use appropriate engineering controls and work practices to prevent exposure of occupants and the mold remediation company's employees and agents to mold;

(3) Determine the type of containment to use during mold remediation;

(4) Inform the customer in writing of the mold remediation company's determinations regarding containment, including, at a minimum, if the mold remediation company plans to:

(a) Use full or limited containment;

(b) Use negative pressure; or

(c) Advise measures to protect occupants;

(5) If the mold remediation company makes a determination not to use containment, advise the customer in writing of the reasons for that determination;

(6) If mold is or will be disturbed, or if workers enter or will enter a containment area, ensure that workers use appropriate protective equipment, including, at a minimum:

(a) A respirator approved by the National Institute for Occupational Safety and Health (NIOSH);

(b) Goggles, if a full face respirator is not used; and

(c) Gloves; and

(7) Prior to contracting for mold remediation, inform the customer in writing:

(a) Of the potential health risks of mold exposure generally, by providing a copy of the most recent edition of the U.S. Environmental Protection Agency's A Brief Guide to Mold, Moisture, and Your Home, Document Number EPA 402-K-02-003;

(b) Of the areas to be vacated for the duration of the remediation and the estimated duration of the remediation;

(c) Of the need to advise tenants and occupants to avoid entering containment areas and work areas for the duration of the remediation; and

(d) About mold and indoor environmental professionals generally, by providing a copy of Read This About Mold Before You Sign A Contract, Form MRC-1, and Read This About Indoor Environmental Professionals Before You Sign A Contract, Form MRC-2, to the customer prior to or during the initial visit to the property. If the Form MRC-1 is provided to the customer with other items, the Form MRC-1 shall be on top of or prominent among the other items.

Section 3. Contamination Prevention and Project Documentation. (1) Except as provided by subsection (6) of this section, a mold remediation company shall provide the customer with a written mold assessment and remediation plan prior to entering into a mold remediation contract with the customer.

(a) Portions of the mold assessment and remediation plan may be prepared by an independent indoor environmental professional if the customer has engaged one (1).

(b) The written mold assessment and remediation plan shall include, at a minimum:

1. The scope of work, including, at a minimum, the area or areas to be remediated, the tasks to be performed, and a price estimate;

2. An assessment of the source of moisture and, if applicable, measures to take to remedy or manage the moisture source. If the source of moisture or the measures to remedy or manage the moisture source have not been identified or cannot be determined, the mold assessment and remediation plan shall include a statement to that effect;

3. An assessment of the extent of the mold problem to be addressed;

4. The containment and removal techniques that will be used to control the spread of mold contamination, including the written disclosures required by Section 2(4), (5), and (7) of this administrative regulation; and

5. A statement describing how the postremediation evaluation will be conducted, including:

a. Visual examination for removal of mold, and mold-contaminated or water-damaged materials and debris;

b. Examination to determine that surfaces are free of dust;

c. Examination to determine if mold-associated odors have been eliminated; and

d. Sampling or testing for postremediation verification, if recommended. If postremediation verification is to be conducted, it shall be performed by an independent indoor environmental professional paid directly by the customer and reporting directly to the customer.

(2) If the source of moisture or the measures to remedy or manage the moisture source have not been identified or cannot be determined, or if the customer chooses to proceed with mold remediation without remedying and managing the moisture source, or both, a mold remediation company shall not perform mold remediation work for the customer until the mold remediation company obtains a completed, signed, and dated Notice of Moisture Problem, Form MRC-3, from the customer and provides a copy of a completed Form MRC-3 to the customer.

(3) A mold remediation company shall not perform mold remediation work without a written contract. A mold remediation company shall ensure that a contract for mold remediation incorporates the mold assessment and remediation plan required by subsection (1) of this section.

(4) The mold remediation company shall obtain a copy of Read This About Mold Before You Sign A Contract, Form MRC-1, and Read This About Indoor Environmental Professionals Before You Sign A Contract, Form MRC-2, with the customer's dated signature on each form and provide a copy of the completed Form MRC-1 and Form MRC-2 to the customer prior to entering into a contract with the customer for mold assessment or mold remediation.

(5) A mold remediation company shall provide the customer with a written change order to be signed and dated by the customer prior to performing additional work for which there is a cost to the customer or prior to a substantive or material departure from the mold assessment and remediation plan.

(6) (a) If, because of the size and scope of the work to be performed, it is not practicable to provide a mold assessment and remediation plan for a commercial or institutional customer and if the customer requests in writing that work begin prior to receiving the mold assessment and remediation plan, the mold remediation company shall, prior to entering into a mold remediation contract with the customer:

1. Obtain a completed, signed, and dated Commercial or Institutional Customer, Form MRC-4, from the customer and provide a copy of a completed Form MRC-4 to the customer; and

2. Provide the customer a price list that includes the amounts charged for labor and equipment.

(b) The mold remediation company shall provide updates to the customer regarding the work performed and the work not yet performed. The updates shall be provided on a periodic basis as agreed to by the customer.

(7) At the conclusion of the mold remediation work, a mold remediation company shall provide the customer with a written postremediation report that includes, at a minimum, a:

(a) Statement indicating if all visible mold, unrestorable mold-contaminated materials, and debris have been removed;

(b) Statement indicating if all mold-associated odors have been eliminated;

(c) Statement indicating if surfaces are free of dust; and

(d) List of independent indoor environmental professionals, if sampling or testing to verify the mold remediation is required by the contract.

(8) A mold remediation company shall maintain copies of all documents required by this administrative regulation for a period of at least three (3) years following completion of the mold remediation work.

Section 4. Contamination Control. A mold remediation company shall:

(1) Control mold contamination as close as practical to its source in order to prevent the spread of mold or mold spores or particles;

(2) Minimize dust generation; and

(3) Ensure that mold contamination does not spread to less-contaminated or non-contaminated areas.

Section 5. Contamination Removal. A mold remediation company shall:

(1) Physically remove mold contamination from the structure, systems, and contents to return the structure, systems, and contents within the remediated area to a normal fungal ecology; and

(2) Return the structure, systems, and contents within the remediated area to a clean condition. The structure, systems, and contents shall be considered clean if:

(a) Mold contamination is removed;

(b) Unrestorable mold-contaminated materials are removed;

(c) Debris is removed;

(d) Surfaces are free of dust; and

(e) Remediated areas are free of odors associated with mold.

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

(a) "Read This About Mold Before You Sign A Contract", Form MRC-1, July 2012;

(b) "Read This About Indoor Environmental Professionals Before You Sign A Contract", Form MRC-2, July 2012;

(c) "Notice of Moisture Problem", Form MRC-3, July 2012;

(d) "Commercial or Institutional Customer", Form MRC-4, July 2012; and

(e) "A Brief Guide to Mold, Moisture, and Your Home", Document Number EPA 402-K-02-003, Reprinted September, 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Attorney General, Office of Consumer Protection, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Monday through Friday, 8:30 a.m. to 4:30 p.m.

JACK CONWAY, Attorney General
TODD LEATHERMAN, Executive Director

APPROVED BY AGENCY: July 12, 2012

FILED WITH LRC: July 13, 2012 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2012, at 10:00 a.m., Eastern Time, at the Kentucky Attorney General's Office of Consumer Protection, 1024 Capital Center Drive, Suite 200, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 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 canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 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: Kevin R. Winstead, Assistant Attorney General, Kentucky Attorney General's Office of Consumer Protection, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 696-5389, fax (502) 573-8317.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kevin R. Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum standards applicable to mold remediation companies that operate in the Commonwealth of Kentucky pursuant to KRS 367.83801 to.83807 as enacted by House Bill 44 (2010 Ky. Acts ch. 89), and incorporates information forms for customers about mold and indoor environmental professionals, a notice of moisture problem form for customers, an information form for commercial or institutional customers, and an EPA guide to inform customers about the health risks of mold exposure generally, to be utilized by persons subject to this administrative regulation.

(b) The necessity of this administrative regulation: This regulation is necessary for the efficient and uniform application of the requirements of KRS 367.83801 to.83807. KRS 367.83805(1) requires the Attorney General, after consultation with the Public Protection Cabinet (now the Energy and Environmental Cabinet) and the Department for Public Health, to establish the minimum standards applicable to mold remediation companies that operate in the Commonwealth of Kentucky, based on the five general principles of mold remediation created by the Institute of Inspection, Cleaning and Restoration Certification (IICRC) in its publication, IICRC S520, Second Edition, Standard and Reference Guide for Professional Mold Remediation, or its successor publication. KRS 367.83805(1) also requires all mold remediation companies operating in the Commonwealth of Kentucky to adhere to the minimum standards established by the Attorney General, and KRS 367.83805(2) provides that consumer complaints regarding adherence by mold remediation companies to the administrative regulations be directed to the Attorney General. KRS 367.83807 provides the Attorney General with jurisdiction to enforce KRS 367.83801 to.83807.

(c) How this administrative regulation conforms to the content

of the authorizing statutes: This administrative regulation establishes minimum standards applicable to mold remediation companies that operate in the Commonwealth of Kentucky, based on the five general principles of mold remediation created by the IICRC in its publication, IICRC S520, Second Edition, Standard and Reference Guide for Professional Mold Remediation. These minimum standards were established after consultation with representatives of the Public Protection Cabinet (now the Energy and Environmental Cabinet) and the Department for Public Health.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of KRS 367.83801 to.83807, by establishing minimum standards applicable to mold remediation companies that operate in the Commonwealth of Kentucky, and incorporating an information form for customers about mold, an information form for customers about indoor environmental professionals, a notice of moisture problem form for customers, an information form for commercial or institutional customers, and an EPA guide to inform customers about the health risks of mold exposure generally, to be utilized by persons subject to this administrative regulation.

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

(a) How the amendment will change this existing administrative regulation: Not applicable because this is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Not applicable because this is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable because this is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable because 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 individuals or entities that perform mold remediation for compensation in the Commonwealth of Kentucky and their customers. It is estimated that approximately 35 to 50 mold remediation companies will be affected by this administrative regulation, but the actual number is unknown. The customers of mold remediation companies operating in the Commonwealth of Kentucky will also be affected, but the number is unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The enactment of House Bill 44 (2010 Ky. Acts ch. 89), codified at KRS 367.83801 to.83807, subjects mold remediation companies that operate in the Commonwealth of Kentucky to certain minimum standards, and requires the Attorney General, after consultation with the Public Protection Cabinet and the Department for Public Health, to establish the minimum standards applicable to mold remediation companies that operate in the Commonwealth of Kentucky, based on the five general principles of mold remediation created by the IICRC in its publication, IICRC S520, Second Edition, Standard and Reference Guide for Professional Mold Remediation, or its successor publication. This administrative regulation will impact mold remediation companies that operate in the Commonwealth of Kentucky and their customers by establishing certain minimum standards, such as:

1. A mold remediation company shall assure the appropriate training, education, and experience of its principals and employees (Section 2(1));

2. A mold remediation company shall use appropriate engineering controls and work practices to prevent exposure to mold (Section 2(2));

3. A mold remediation company shall determine the type of containment to use during mold remediation and inform the customer (Section 2(3), (4), (5));

4. A mold remediation company shall ensure that workers use appropriate protective equipment if mold will be disturbed (Section 2(6));

5. A mold remediation company shall provide written information to the customer about: the potential health risks of mold by using the prescribed EPA guide; the areas to be vacated; the need to tell occupants to avoid containment and work areas; and mold and indoor environmental professionals generally by using the prescribed forms. A mold remediation company shall also obtain copies of the information forms about mold and indoor environmental professionals signed by the customer prior to entering into a contract with a customer for mold assessment or mold remediation (Section 2(7), Section 3(4));

6. A mold remediation company shall provide the customer with a written mold assessment and remediation plan containing at least the information required by this administrative regulation, before entering into a mold remediation contract, subject to the limited exception explained below for commercial or institutional customers (Section 3(1), (6));

7. If the size and scope of the work make it not practicable to provide a mold assessment and remediation plan and the commercial or institutional customer requests in writing that work begin prior to receiving the plan, a mold remediation company shall provide a price list that includes the amounts charged for labor and equipment and the form for commercial or institutional customers, and shall provide updates to the customer regarding the work performed and the work not yet performed (Section 3(6));

8. A mold remediation company shall provide the notice of moisture problem form to the customer if the source of moisture or the measures to remedy and manage the moisture source has not been identified or cannot be determined, or if the customer chooses to proceed with mold remediation without remedying and managing the moisture source, or both (Section 3(2));

9. A mold remediation company shall not perform any mold remediation work without a written contract that incorporates the mold assessment and remediation plan (Section 3(3));

10. A mold remediation company shall get a signed change order from the customer before doing additional work if there is a cost to the customer or it is a substantive or material departure from the mold assessment and remediation plan (Section 3(5));

11. At the conclusion of the mold remediation work, a mold remediation company shall provide the customer with a written postremediation report containing at least the information required by this administrative regulation (Section 3(7));

12. A mold remediation company shall maintain copies of documents required by this administrative regulation for three years after completing the work (Section 3(8));

13. A mold remediation company shall control mold contamination as close as practical to its source in order to prevent the spread of mold or mold spores or particles, and minimize dust generation (Section 4);

14. A mold remediation company shall physically remove mold contamination to return the remediated area to a normal fungal ecology, and return remediated area to a clean condition (Section 5); and

15. Any postremediation verification shall be performed by an indoor environmental professional paid directly by and reporting directly to the customer (Section 3(1)5.d.);

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost to print the five forms required by this administrative regulation is estimated to be $2.00 to $2.50 per customer. The estimated total printing cost to a mold remediation company is unknown because it depends on the number of customers or the number of copies printed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Pursuant to KRS 367.83805(2), customer complaints regarding adherence by mold remediation companies to this administrative regulation shall be directed to the Attorney General. The Attorney General will review such customer complaints to determine compliance with this administrative regulation.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General fund appropriations and agency receipts.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: None expected at this time.

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

(9) TIERING: Tiering is not applied in this administrative regulation because the administrative regulation does not disproportionately impact certain classes of regulated entities and the requirements of the statutes apply uniformly to any mold remediation company operating in the Commonwealth of Kentucky.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Office of the Attorney General will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 367.83801, KRS 367.83803, KRS 367.83805, KRS 367.83807.

3. 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? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Kentucky Board of Prosthetics, Orthotics, and Pedorthics
(New Administrative Regulation)

201 KAR 44:090. Requirements for licensure as an orthotist, prosthetist, orthotist-prosthetist, pedorthist, or orthotic fitter on or after January 1, 2013.

RELATES TO: KRS 319B.010, 319B.030

STATUTORY AUTHORITY: KRS 319B.030(1), (2), 319B.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319B.030(1) requires the board to establish licensure categories and issue licenses for persons who wish to practice in this state as a licensed orthotist, licensed prosthetist, licensed orthotist-prosthetist, licensed pedorthist, or licensed orthotic fitter. This administrative regulation establishes the procedure by which those applicants shall apply for a license pursuant to KRS 319B.030.

Section 1. Licensure of an Orthotist, Prosthetist or Orthotist-Prosthetist. An applicant for licensure as an orthotist, prosthetist, or orthotist-prosthetist shall submit:

(1) A completed "Application for Licensure, Form BPOP1";

(2) A certified copy of the applicant's transcript from an accredited college or university showing a minimum of a baccalaureate degree awarded to the applicant;

(3) A certified copy of the applicant's education program in orthotics, prosthetics, or both from an educational program accredited by the Commission on Accreditation of Allied Health Education Program;

(4) Proof of completion of a residency meeting the standards established in KRS 319B.010(26) for the discipline for which the applicant has applied;

(5) Proof of the applicant's having obtained a passing score on the American Board of Certification (ABC) examination;

(6) The appropriate fee for licensure as required by 201 KAR 44:010; and

(7) Detailed work history, including scope of practice, covering the four (4) year period immediately prior to the date of application.

Section 2. Licensure of a Pedorthist. An applicant for licensure as a pedorthist shall meet the following requirements:

(1) Submit a completed "Application for Licensure, Form BPOP1";

(2) Submit a certified copy of high school diploma or comparable credential;

(3) Submit proof of completion of an NCOPE- approved pedorthic education program;

(4) Submit proof of passing the American Board of Certification (ABC) exam;

(5) Submit proof of a minimum of 1,000 hours of pedorthic patient care, 500 hours shall be completed after the NCOPE- approved education program;

(6) Submit the appropriate fee for licensure as required by 201 KAR 44:010; and

(7) Submit detailed work history, including scope of practice, covering the four (4) year period prior to the date of application.

Section 3. Licensure of an Orthotic Fitter. An applicant for licensure as an orthotic fitter shall meet the following requirements:

(1) Submit a completed "Application for Licensure, Form BPOP1";

(2) Submit a certified copy of high school diploma or comparable credential;

(3) Submit proof of completion of an NCOPE- approved orthotic fitter education program;

(4) Submit proof of passing the American Board of Certification (ABC) exam;

(5) Submit proof of a minimum of 1,000 hours of orthotic fitter patient care, 500 hours shall be completed after the NCOPE approved education program;

(6) Submit the appropriate fee for licensure as required by 201 KAR 44:010; and

(7) Submit detailed work history, including scope of practice, covering the four (4) year period prior to the date of application.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference: "Application for Licensure, BPOP1" 07/2012 is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Prosthetics, Orthotics, and Pedorthics, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5:00 p.m.

SIENNA NEWMAN, Chairperson

APPROVED BY AGENCY: June 21, 2012

FILED WITH LRC: July 11, 2012 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, August 27, 2012, at 1:30 p.m., local time, at the Kentucky Board of Prosthetics, Orthotics, and Pedorthics, 911 Leawood Drive, Frankfort, Kentucky 40601. 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. 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 the close of business Friday, August 31, 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: Robin Vick, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, PO Box 1360, Frankfort, Kentucky 40602, phone (502) 564-3296 ext 246, fax (502) 696-3925.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robin Vick

(1) Provide a brief summary of: Establishes the requirements to obtain a license as an Orthotist, Prosthetist, Orthotist/Prosthetist, Pedorthist, or Orthotic Fitter.

(a) What this administrative regulation does: This administrative regulation establishes the procedures for the licensure of persons who wish to practice in the state as a Licensed Orthotist, Licensed Prosthetist, Licensed Orthotist/Prosthetist, Licensed Pedorthist, or Licensed Orthotic Fitter.

(b) The necessity of this administrative regulation: This administrative is necessary to set the process for licensure.

(c) How does this administrative regulation conform to the content of the authorizing statutes? KRS Chapter 319B requires the board to establish a procedure for the licensure of persons who wish to practice in the state as a Licensed Orthotist, Licensed Prosthetist, Licensed Orthotist/Prosthetist, Licensed Pedorthist, or Licensed Orthotic Fitter. This administrative regulation establishes the requirements for applicants for licensure

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs the applicants of the requirements for the process involved in obtaining licensure from the board.

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

(a) How the amendment will change this existing administrative regulation: 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: An estimated 150 persons will seek licensure within the next fiscal year, this regulation will also continue as new license new applicants who seek licensure from the board.

(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 requires applicants to file the completed application setting forth how the individual meets the qualifications for licensure.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fee for applying will be established in a separate regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants for licensure will have their applications reviewed by the board.

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

(a) Initially: The budget for the Board is $9000 per year.

(b) On a continuing basis: The budget for the Board is estimated to continue to have a budget of $9000 per year.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by fees paid by the licensees and applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation is the initial fee regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation did not establish the fees only the procedure for obtaining a license but there will be a fee to apply that is set in a separate regulation.

(9) Tiering: Is tiering applied? No. The regulation requires the same documentation to be provided with each type of application to apply to the board in the state as a Licensed Orthotist, Licensed Prosthetist, Licensed Orthotist/Prosthetist, Licensed Pedorthist, or Licensed Orthotic Fitter.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Prosthetics, Orthotics and Pedorthics Licensing Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319B.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The revenue generated will depend on the number of applicants for the year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The revenue will depend on the number of applicants for the subsequent years.

(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 (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

GENERAL GOVERNMENT CABINET
Kentucky Board of Prosthetics, Orthotics, and Pedorthics
(New Administrative Regulation)

201 KAR 44:100. Inactive status.

RELATES TO: KRS 319B.040(6)

STATUTORY AUTHORITY: KRS 319B.040(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319B.040(6) authorizes the board to promulgate administrative regulations to establish conditions for inactive licensure status. This administrative regulation establishes procedures for inactive status and reactivation.

Section 1. (1) Upon submitting the "Application for Inactive License, Form BPOP4," the board may grant inactive. While on inactive status, the licensee shall not engage in the practice of prosthetics, orthotics, or pedorthics.

(2) The fee for licensure on inactive status shall be fifty (50) dollars per year.

(3) Continuing education requirements shall be waived for licensees on inactive status during the time they remain inactive.

(4) If the inactive licensee applies to the board to return to active status, the licensee shall submit proof that he has completed six (6) hours of continuing education for the area of discipline in which the licensee is applying within the last twelve (12) month period immediately preceding the date on which the application is submitted.

(5) The licensee may, with extenuating circumstances, submit a request to the board to return to active status immediately, with the provision that he shall receive the appropriate number of continuing education hours within six (6) months of the date on which he returns to active status.

(6) The reactivation fee for changing from inactive status to active status shall be in compliance with 201 KAR 44:010, Section 2(1) through (3).

Section 2. Incorporation by Reference. (1) "Application for Inactive License", Form BPOP4, 07/2012, is incorporated by reference.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Kentucky Board of Prosthetics, Orthotics, and Pedorthics, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 5:00 p.m.

SIENNA NEWMAN, Chair

APPROVED BY AGENCY: June 21, 2012

FILED WITH LRC: July 11, 2012 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, August 27, 2012, at 1:30 p.m., local time, at the Kentucky Board of Prosthetics, Orthotics, and Pedorthics, 911 Leawood Drive, Frankfort, Kentucky 40601. 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. 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 the close of business Friday, August 31, 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: Robin Vick, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, PO Box 1360, Frankfort, Kentucky 40602, phone (502) 564-3296 ext 246, fax (502) 696-3925.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robin Vick

(1) Provide a brief summary of: Establishes procedures for inactive status and reactivation.

(a) What this administrative regulation does: Sets the procedures for obtaining an inactive status licenses and how to reactivate it.

(b) The necessity of this administrative regulation: To establish how a person can be granted an inactive status license and the requirements to reactivate it.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319B.040(6) authorizes the board to establish conditions for inactive status licenses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs the potential inactive status licenses how to request the inactive status and how to reactive their licenses.

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

(a) How the amendment will change this existing administrative regulation: This 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: Approximately 150 persons are expected to seek licensure from the board, it is expected that only a few a year may request inactive status.

(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 establishes conditions for an inactive status license.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Fifty (50) dollars to obtain an inactive status license.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Inactive status license will allow licensees who are not practicing the ability to maintain a licenses to be able to return to active practice in an easier form than producing the requirements for a new license.

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

(a) Initially: There will be minimal cost to the board, as this will only be required upon a request of an inactive license.

(b) On a continuing basis: Estimated to be $1-$1000 to the board to review the application for inactive status or to reactivate.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded solely by fees paid by the licensees and applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation does not increase fees nor is any funding necessary to implement.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation establishes the fee for obtaining an inactive status license.

(9) TIERING: Is tiering applied? No.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Prosthetics, Orthotics and Pedorthics.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319B.040(6)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subse-

quent years? None.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

GENERAL GOVERNMENT CABINET
Kentucky Board of Prosthetics, Orthotics, and Pedorthics
(New Administrative Regulation)

201 KAR 44:110 Licensure by endorsement.

RELATES TO: KRS 319B.130

STATUTORY AUTHORITY: KRS 319B.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319B.130
authorizes the board to issue a license to a prosthetist, orthotist, pedorthist, or orthotic fitter possessing a license issued by another state. This administrative regulation establishes the requirements for issuance of a license by endorsement.

Section 1. The board shall issue a license by endorsement, without examination, to a prosthetist, orthotist, pedorthist, or orthotic fitter currently licensed by examination by the corresponding authority of another state upon:

(1) Verification that the applicant meets all current requirements for licensure as established by KRS 319B and 201 KAR 44:090;

(2) Payment of the fee for licensure as established by 201 KAR 44:010; and

(3) Verification of the applicant's license issued by another state that certifies that the license is:

(a) Active;

(b) In good standing; and

(c) Free of pending complaints.

Section 2. Incorporated by Reference. (1) "Application for Licensure by Endorsement", BPOP2, 07/2012, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Prosthetics, Orthotics, and Pedorthics, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

SIENNA NEWMAN, Chairperson

APPROVED BY AGENCY: June 21, 2012

FILED WITH LRC: July 11, 2012 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, August 27, 2012, at 1:30 p.m., local time, at the Kentucky Board of Prosthetics, Orthotics, and Pedorthics, 911 Leawood Drive, Frankfort, Kentucky 40601. 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. 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 the close of business Friday, August 31, 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: Robin Vick, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, PO Box 1360, Frankfort, Kentucky 40602, phone (502) 564-3296 ext 246, fax (502) 696-3925.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robin Vick

(1) Provide a brief summary of: Establishes procedures for granting licenses if a person holds a license from another state.
What this administrative regulation does: Sets the procedures for obtaining a license if a person holds an active license from another state.

(b) The necessity of this administrative regulation: To establish how a person can obtain a licenses if they already hold an active license from another state.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319B.130authorizes the board to establish conditions for endorsement licenses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs the potential licensee from another state how to obtain a Kentucky Licenses if they are active and in good standing from their current state of practice.

(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: 25-50 are expected to apply for an endorsement license to practice in Kentucky from a surrounding state.

(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 establishes conditions for a person to obtain a license if they are active and in good standing from another state.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost for a licenses if the same for an endorsement license as it is a new applicant. This regulation will only reduce the amount of required documentation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): It will allow a potential licenses who are currently practicing in good standing in another state the opportunity to receive a license from Kentucky.

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

(a) Initially: There will be minimal cost to the board, as it will be the same cost as an initial applicant.

(b) On a continuing basis: Estimated to be $1-$1000 to the board to review the application for an endorsement license.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded solely by fees paid by the licensees and applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation does not increase fees nor is any funding necessary to implement.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation does not establish the fee it only sets forth the procedures for obtaining an endorsement license.

(9) TIERING: Is tiering applied? No.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Prosthetics, Orthotics and Pedorthics.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319B.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. None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-): N/A
Expenditures (+/-): N/A
Other Explanation: N/A

GENERAL GOVERNMENT CABINET
Kentucky Board of Prosthetics, Orthotics, and Pedorthics
(New Administrative Regulation)

201 KAR 44:120 Post Residency registration.

RELATES TO: KRS 319B.030(1)(c)
STATUTORY AUTHORITY: KRS 319B.030(1)(c)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319B.030(1)(c) authorizes the board to establish circumstances and conditions for individuals who have completed the required training and established circumstances by which an individual may continue to practice as a prosthetist or orthotist.

Section 1. Eligibility. (1) An orthotic or prosthetic resident who has successfully completed an NCOPE residency in the appropriate field and prior to completing the American Board for Certification examination, may work in the discipline in which he or she is exam eligible.

(2) Applicant shall:

(a) Submit registration to the board for approval;

(b) Submit documentation of residency completion;

(c) Submit documentation of application for examination; and

(d) Submit a letter from a supervisory licensed practitioner that monitoring of the applicant will continue.

(3) The exemption shall expire fifteen (15) months from the date of completion of the NCOPE residency.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference: "Post Residency Registration", Form BPOP3, 07/2012, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Prosthetics, Orthotics, and Pedorthics, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

SIENNA NEWMAN, Chairperson
APPROVED BY AGENCY: June 21, 2012
FILED WITH LRC: July 11, 2012 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, August 27, 2012, at 1:30 p.m., local time, at the Kentucky Board of Prosthetics, Orthotics and Pedorthics, 911 Leawood Drive, Frankfort, Kentucky 40601. 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. 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 the close of business Friday, August 31, 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: Robin Vick, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, PO Box 1360, Frankfort, Kentucky 40602, phone (502) 564-3296 ext 246, fax (502) 696-3925.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robin Vick

(1) Provide a brief summary of: Establishes procedures and conditions for a person to continue practice without a license following their residency completion.

(a) What this administrative regulation does: Sets the procedures and conditions for a person to continue practice without a license following their residency completion.

(b) The necessity of this administrative regulation: To establish how a person can continue to work as an Orthotist or Prosthetist following their residency completion until the completion of the board exams.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319B.030 (1)(c) authorizes the board to establish conditions for practice following a residency program prior to completion of the board exams.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the requirements to continue to practice and under what conditions of supervision.

(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: 1 to 10 are expected to apply for a post residency registration to practice in Kentucky following the completion of their residency program prior to the successful completion of the board exams.

(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 establishes conditions for a person to continue to practice following their residency.

(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 the person to register to continue to practice.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): It will allow a potential licenses who are currently practicing as a resident to continue to practice under established conditions and supervision until the successful completion of the board exam.

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

(a) Initially: There will be minimal cost to the board, as it will only register the potential licensure applicant prior to completing all areas to receive an active license.

(b) On a continuing basis: Estimated to be $1-$1000 to the board to review the post residency registrations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded solely by fees paid by the licensees and applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation does not increase fees nor is any funding necessary to implement.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation does not establish a fee it only sets forth the procedures for obtaining a post residency registration.

(9) TIERING: Is tiering applied? No.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Prosthetics, Orthotics and Pedorthics.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319B.030(1)(c).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

CABINET FOR ECONOMIC DEVELOPMENT
Kentucky Economic Development Finance Authority
(Repealer)

306 KAR 1:011. Repeal of 306 KAR 1:010, 1:020, 1:030, 1:040, 1:050, 1:060, 1:070 and 1:090

RELATES TO: KRS 141.040, 154.45-001 – 154.45-120, 26 U.S.C.A Sections 167, 168, 169

STATUTORY AUTHORITY: KRS 154.45-070

NECESSITY, FUNCTION AND CONFORMITY: KRS 154.45-001 to 154.45-120 authorized the Kentucky Economic Development Finance Authority (the "Authority"), through the Cabinet for Economic Development (the "Cabinet"), to establish procedures and standards for the Enterprise Zone Program for KRS Chapter 154.45 economic development incentives. KRS 154.45-070 authorizes the Authority through the Cabinet to carry out and effectuate the purposes and provisions of KRS 154.45 economic development incentives and promulgate administrative regulations for this purpose. This administrative regulation repeals 306 KAR 1:010, 1:020, 1:030, 1:040, 1:050, 1:060, 1:070 and 1:090 related to the Enterprise Zone Program, which are no longer required because the authorizing statutes have been repealed and the Enterprise Zone Program no longer exists.

Section 1. The following administrative regulations are hereby repealed:

(1) 306 KAR 1:010, Definitions for 306 KAR Chapter 1;

(2) 306 KAR 1:020, Application process for new or existing business;

(3) 306 KAR 1:030, Eligibility requirements for expansion of an enterprise zone;

(4) 306 KAR 1:040, Qualified business certificates:

(5) 306 KAR 1:050, Removal of designation;

(6) 306 KAR 1:060, Conflict of interest;

(7) 306 KAR 1:070, Monitoring; and

(8) 306 KAR 1:090, Geographic neighborhood area.

JEAN HALE, Chairman

LARRY HAYES, Secretary

APPROVED BY AGENCY: May 31, 2012

FILED WITH LRC: June 15, 2012 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2012, at 10:00 a.m. at the Cabinet for Economic Development, Old Capitol Annex, 300 West Broadway, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 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: Janine Coy-Geeslin, Staff Attorney, Cabinet for Economic Development, Old Capitol Annex, 300 West Broadway, Frankfort, Kentucky 40601, phone (502) 564-7670, fax (502) 564-1535.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 306 KAR 1:010, 1:020, 1:030, 1:040, 1:050, 1:060, 1:070 and 1:090.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal 306 KAR 1:010, 1:020, 1:030, 1:040, 1:050, 1:060, 1:070 and 1:090 because the authorizing statutes have been repealed and the Enterprise Zone Program no longer exists.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 13A.210 and KRS 154.45-070, the Kentucky Economic Development Finance Authority shall repeal the administrative regulations governing the Enterprise Zone Program because these administrative regulations are no longer necessary. The authorizing statutes have been repealed, and the Enterprise Zone Program no longer exists.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will remove administrative regulations that are no

longer necessary because the program statutes have been repealed.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation is not an amendment to an existing regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The affected entities include the Cabinet for Economic Development and the Kentucky Economic Development Financing Authority.

(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 is a repealer regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no new costs related to repealing these administrative regulations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This is a repealer regulation.

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

(a) Initially: This is a repealer regulation.

(b) On a continuing basis: This is a repealer regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This is a repealer regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This is a repealer regulation.

(8) State whether or not this administrative regulation establishes any fees or directly of indirectly increases any fees: This is a repealer regulation.

(9) TIERING: Is tiering applied? This is a repealer 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 department, or school districts) will be impacted by this administrative regulation? The Cabinet for Economic Development and the Kentucky Economic Development Finance Authority.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 13A.310 and KRS 154.45-070

4. Estimate the effect of this administrative regulation on the expenditures and revenues of 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 is a repealer regulation.

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

(c) How much will it cost to administer this program for the first year? This is a repealer regulation.

(d) How much will it cost to administer this program for subsequent years? This is a repealer 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 ECONOMIC DEVELOPMENT
Kentucky Economic Development Finance Authority
(New Administrative Regulation)

307 KAR 1:005. Applications for Kentucky Incentive Programs.

RELATES TO: KRS 154.12-100, 154.20-033, 154.31, 154.32-010

STATUTORY AUTHORITY: KRS 154.12-100, 154.20-033, 154.31-030, 154.32-030

NECESSITY, FUNCTION AND CONFORMITY: KRS 154.12-100, 154.20-033, 154.31-030 and 154.32.030 authorize the Kentucky Economic Development Finance Authority to establish additional procedures and standards for the application process for various incentive programs. KRS 154.20-033 authorizes the Kentucky Economic Development Finance Authority to impose fees in conjunction with the application process. This administrative regulation incorporates by reference the applications for these incentives and establishes the fee structure.

Section 1. An applicant for an incentive program shall submit the information required by the instruction sheet, Application for Kentucky Business Investment (KBI) Program, Kentucky Enterprise Initiative Act (KEIA), Economic Development Bond (EDB).

Section 2. Kentucky Business Investment (KBI) Program. An applicant for the Kentucky Business Investment (KBI) Program shall submit:

(1) The following completed forms:

(a) Application for Incentive Programs, Project Information;

(b) Application for Incentive Programs, Kentucky Business Investment (KBI) Program;

(c) Application for Incentive Programs, Certification of Application; and

(d) Application for Incentive Programs, Attachment A, Incentive Disclosure Statement;

(2) An application fee in the amount of $1,000; and

(3) An administrative fee equal to one-fourth (0.25) percent of the incentive amount authorized in the tax incentive agreement up to a maximum of $50,000.

Section 3. Kentucky Enterprise Initiative Act (KEIA) Program. An applicant for the Kentucky Enterprise Initiative Act (KEIA) Program shall submit:

(1) The following completed forms:

(a) Application for Incentive Programs, Project Information;

(b) Application for Incentive Programs, Kentucky Enterprise Initiative Act (KEIA);

(c) Application for Incentive Programs, Certification of Application; and

(d) Application for Incentive Programs, Attachment A, Incentive Disclosure Statement; and

(2) An application fee in the amount of $500.

Section 4. Economic Development Bond (EDB) Program. An applicant for an Economic Development Bond (EDB) shall submit the following completed forms:

(1) Application for Incentive Programs, Project Information;

(2) Application for Incentive Programs, Economic Development Bonds (EDB) – Company portion;

(3) Application for Incentive Programs, Economic Development Bonds (EDB) – Local portion;

(4) Application for Incentive Programs, Certification of Applica-

tion; and

(5) Application for Incentive Programs, Attachment A, Incentive Disclosure Statement.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Incentive Programs, Project Information", Rev. 4/2012;

(b) "Application for Incentive Programs, Kentucky Business Investment (KBI) Program", Rev. 4/2012;

(c) "Application for Incentive Programs, Kentucky Enterprise Initiative Act (KEIA)", Rev. 4/2012;

(d) "Application for Incentive Programs, Economic Development Bonds (EDB) – Company portion", Rev. 4/2012;

(e) "Application for Incentive Programs, Economic Development Bonds (EDB) – Local portion", Rev. 4/2012;

(f) "Application for Incentive Programs, Certification of Application", Rev. 4/2012; and

(g) "Application for Incentive Programs, Attachment A, Incentive Disclosure Statement", Rev. 4/2012.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Economic Development, Department of Financial Incentives, Old Capitol Annex, 300 West Broadway, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m.

JEAN HALE, Chairman
LARRY HAYES, Secretary

APPROVED BY AGENCY: May 31, 2012

FILED WITH LRC: June 15, 2012 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing of this administrative regulation shall be held on August 22, 2012, at 10:00 a.m. at the Cabinet for Economic Development, Old Capitol Annex, 300 West Broadway, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by no later than five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 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: Janine Coy-Geeslin, Staff Attorney, Cabinet for Economic Development, Old Capitol Annex, 300 West Broadway, Frankfort, Kentucky 40601, phone (502) 564-7670, fax (502) 564-1535.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates applications for the economic development tax incentives created by KRS 154.12-100, 154.31, 154.32.

(b) The necessity of this administrative regulation: This regulation will incorporate several economic development incentive applications into one regulation, which will provide a means for those applying for these economic development incentives and will allow the Kentucky Economic Development Finance Authority (the "Authority") to revise their applications more efficiently.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The cited statutes direct the Authority to promulgate regulations for these economic development incentives.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation is required by statute and will provide a more efficient means to begin the application 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: N/A

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The types of entities affected by this administrative regulation will be companies, businesses, and other entitles considering economic development incentives as a source of funding location to or expansions in the Commonwealth, the Cabinet for Economic Development and the Authority.

(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 sets forth the application form and fees and sets forth supplemental information that may be required as part of the application. Therefore, the applicant will have to follow the steps of the application process, provide the supplemental documentation required, and pay the fee in order to qualify for consideration by the Authority for approval.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is an application fee of ($500) for the Kentucky Enterprise Initiative Act (KEIA) and ($1,000) for the Kentucky Business Investment (KBI) Program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): If the applicant project is approved, the incentive amount approved will vary based upon investment in the Commonwealth and tax revenue generated in the development area.

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

(a) Initially: This regulation combines application forms for various incentives into one application. No new expense is anticipated.

(b) On a continuing basis: See (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The application and administrative fee will provide some financial support, but general administration will have to be covered by existing operating funds from the general fund 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: This regulation does not increase the fees that are currently in effect for these programs.

(8) State whether or not this administrative regulation establishes any fees or directly of indirectly increases any fees: This regulation does not establish new fees or increase any fees. Please see (7).

(9) TIERING: Is tiering applied? Tiering is not used as the application and all application fees are the same and apply to the same class of entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire department, or school districts) will be impacted by this administrative regulation? The Cabinet for Economic Development and the Kentucky Economic Development Finance Authority

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

regulation: KRS 154.12-100, 154.20-030, 154.31-030 and 154.32-030.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of 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 of 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? Cost to the state will depend on the number of applications and projects submitted.

(d) How much will it cost to administer this program for subsequent years? Cost will depend on the number of applications and projects submitted, and whether the applications are submitted electronically.

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 ECONOMIC DEVELOPMENT
Kentucky Economic Development Finance Authority
(Repealer)

307 KAR 8:011. Repeal of 307 KAR 8:010.

RELATES TO: KRS 154.20-033, 154.32

STATUTORY AUTHORITY: KRS 154.20-033, 154.32-030(2)(a)

NECESSITY, FUNCTION AND CONFORMITY: KRS 154.32-030(2)(a) authorizes the Kentucky Economic Development Finance Authority to establish additional procedures and standards for the application process for KRS Chapter 154.32 economic development incentives. KRS 154.20-033 authorizes the Kentucky Economic Development Finance Authority to impose fees in conjunction with the application process. This administrative regulation repeals 307 KAR 8:010, Application for Kentucky Business Investment Program, which is no longer required because the Cabinet for Economic Development is promulgating a new administrative regulation, 307 KAR 1:005, to prescribe new applications for its economic development incentive programs.

Section 1. 307 KAR 8:010, Application for Kentucky Business Investment Programs, is hereby repealed.

JEAN HALE, Chairman
LARRY HAYES, Secretary

APPROVED BY AGENCY: May 31, 2012

FILED WITH LRC: June 15, 2012 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2012, at 10:00 a.m. at the Cabinet for Economic Development, Old Capitol Annex, 300 West Broadway, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 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: Janine Coy-Geeslin, Staff Attorney, Cabinet for Economic Development, Old Capitol Annex, 300 West Broadway, Frankfort, Kentucky 40601, phone (502) 564-7670, fax (502) 564-1535.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 307 KAR 8:010.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal this regulation because the Kentucky Economic Development Finance Authority (the "Authority") through the Cabinet for Economic Development (the "Cabinet") has revised their incentive program applications and will promulgate a new administrative regulation prescribing incentive applications, including the Kentucky Business Investment Program application.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 154.32-030, authorizes the Authority to establish additional procedures and standards for the application process for KRS Chapter 154.32 economic development incentives and promulgate regulations for this purpose. KRS 13A.310 requires that an administrative regulation, once adopted, cannot be withdrawn, but shall be repealed if it is desired that it no longer be effective. This administrative regulation is no longer necessary because it will be replaced by a new regulation prescribing applications for several of the Authority incentive programs, including the Kentucky Business Investment Program. Therefore, the Cabinet wishes to repeal this administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will remove an administrative regulation that is no longer needed.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation is not an amendment to an existing regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The affected entities include companies, businesses, and other entities considering Kentucky Business Investment incentives, the Cabinet and the Authority.

(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 is a repealer regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This is a repealer regulation.

(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.

(b) On a continuing basis: There will be no continuing cost to implement this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: As this administrative regulation is repealing an obsolete regulation, there will be no implementation or enforcement associated with this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regula-

tion, if new, or by the change if it is an amendment: An increase in fees or funding will not be necessary to implement this repealer regulation.

(8) State whether or not this administrative regulation establishes any fees or directly of indirectly increases any fees: This repealer regulation does not establish any fees, and the new regulation with the revised application will not increase the fees for the Kentucky Business Investment Program application.

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire department, or school districts) will be impacted by this administrative regulation? The Cabinet for Economic Development and the Kentucky Economic Development Finance Authority.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 13A.310, KRS 154.20-033, 154.32-030

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

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

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

(c) How much will it cost to administer this program for the first year? There will not be a cost to administer this regulation initially.

(d) How much will it cost to administer this program for subsequent years? There will not be a cost to administer this regulation in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Repealer)

501 KAR 11:011. Repeal of 501 KAR 11:010.

RELATES TO: KRS 218A.435

STATUTORY AUTHORITY: KRS 218A.435

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.435 formerly provided that a portion of the asset forfeitures trust fund be allocated to the Corrections Cabinet, the predecessor of the Department of Corrections, for programs related to drug enforcement and incarceration. The authorizing statute for the administrative regulation has been repealed.

Section 1. 501 KAR 11:010, Asset forfeiture, is hereby repealed.

LADONNA H. THOMPSON, Commissioner

APPROVED BY AGENCY: June 27, 2012

FILED WITH LRC: July 11, 2012 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on August 21, 2012 at 9:00 a.m. at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard 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. Send written notification of intent to be heard at the public hearing five working days prior to the hearing or send written comments on the proposed administrative regulation by the close of business August 31, 2012 to:

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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation repeals the regulation that pertained to asset forfeiture since the authorizing statute has been repealed.

(b) The necessity of this administrative regulation: The authorizing statute has been repealed.

(c) How this administrative regulation conforms to the content of the authorizing statues: The authorizing statute has been repealed.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The authorizing statute has been repealed.

(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: There is no effect on individuals, businesses, organizations, or state and local governments since the authorizing statute has been repealed.

(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 entities will be impacted since the authorizing statute has been repealed.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): No benefits will accrue since the regulation no longer has the authority to exist.

(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: No source of funding is required.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regula-

tion, if new, or by the change, if it is an amendment: No fees are created and no funds are necessary to repeal the administrative regulation.

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

(9) TIERING: Is tiering applied? No. Tiering is not appropriate in this administrative regulation since a regulation is being repealed.

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 administrative regulation being repealed impacted the Department of Corrections and counties where forfeitures occurred, but the authorizing statute no longer exists.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13A.120

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? Repealing the regulation does not create any revenue.

(b) How much will it cost to administer this program for the first year? No costs will be incurred.

(c) How much will it cost to administer this program for subsequent years? No costs will be incurred.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

PUBLIC PROTECTION CABINET
Department of Housing, Buildings, and Construction
Division of Building Codes Enforcement
(New Administrative Regulation)

815 KAR 35:020. Electrical Inspections.

RELATES TO: KRS 227.480, 227.487, 227.491
STATUTORY AUTHORITY: KRS 227.480
NECESSITY, FUNCTION, AND CONFORMITY: KRS 227.480 requires the Department of Housing, Buildings and Construction to promulgate administrative regulations to describe the circumstances for which electrical inspections by a Kentucky certified electrical inspector are required for electrical construction, installations, or repairs of any electrical wiring. This administrative regulation sets forth the circumstances, conditions and instances for which electrical inspections shall be conducted within the Commonwealth by a certified electrical inspector having jurisdiction, as well as for which electrical construction, installations, and repairs.

Section 1. Inspections. The department or certified electrical inspector(s) having jurisdiction shall inspect electrical construction, installations and repairs, for compliance with NFPA 70, the National Electric Code, as adopted and incorporated by reference in 815 KAR 7:120, Kentucky Building Code, 815 KAR 7:125, Kentucky Residential Code, and 815 KAR 10:060, Standards of Safety.

Section 2. Mandatory Electrical Inspections. (1) The department or certified electrical inspector(s) having jurisdiction shall inspect electrical construction, installations and repairs upon request by the permit holder or property owner.

(2) The permit holder or property owner shall be responsible for scheduling an appointment for inspection with the electrical inspection authority for the jurisdiction.

(3) Each mandatory electrical inspection shall be scheduled and completed within five (5) working days of the permit holder or property owner's request for inspection.

(4) Rough-in inspections shall be conducted on all permitted electrical work prior to covering or concealment.

(5) If conditions require partial coverage of the permitted electrical work, permission shall be requested of and received from the electrical inspector prior to coverage or concealment.

(6) Covering an installation without final approval or permission of the electrical inspector shall result in the uncovering of the electrical work for inspection, unless determined unnecessary to confirm compliance with the National Electric Code.

(7) A final inspection shall be conducted by the electrical inspector after completion of the permitted electrical work and prior to occupancy.

(8) A temporary or partial final inspection may be conducted if:

(a) The temporary or partial final inspection will not prevent the remaining portion of the permitted work from being inspected; and

(b) The electrical installations subject to temporary or partial inspection are separate and distinguishable from installations remaining to be inspected.

Section 3. Permissive electrical inspections. A voluntary inspection for any electrical installation, repair or maintenance, not subject to mandatory requirements as set forth in Section 2 of this administrative regulation, may be requested and scheduled with the certified electrical inspector(s) having jurisdiction.

Section 4. Exemptions from mandatory electrical inspections. Electrical inspections shall not be required for:

(1) Electrical work beyond the scope of the NFPA 70 National Electric Code incorporated by reference in 815 KAR 7:120 and 815 KAR 7:125;

(2) Electrical installations, repairs or maintenance within structures determined by the department as not meeting the definition of "building" under KRS 198B.010(4);

(3) Electrical work which is not subject to permitting requirements;

(4) Electrical wiring under the exclusive control of electric utilities:

(a) For the purpose of communication, metering, or for the generation, control, transformation, transmission and distribution of electric energy located in buildings used exclusively by utilities for such purposes;

(b) Located outdoors on property owned or leased by the utility; or

(c) Located on public highways, streets or roads, or outdoors by established rights on private property;

(5) Electrical wiring of a surface coal mine, an underground coal mine, or at a coal preparation plant; and

(6) Appliances.

Section 5. Access. All access necessary for inspections shall be provided by the person(s) obtaining the electrical permit or requesting the electrical inspection.

AMBROSE WILSON IV, Commissioner
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: July 11, 2012
FILED WITH LRC: July 11, 2012 at 4 pm.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 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 August 15, 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 adminis-

trative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 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 502-573-0365 Ext. 144, fax 502-573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dawn M. Bellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the circumstances in which electrical inspections are required to ensure compliance with NFPA 70 National Electric Code, as adopted in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with legislative mandate to promulgate an administrative regulation which describes the circumstances where electrical inspections are required in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutes require statewide electrical inspections of installations, repairs and maintenance as determined necessary by the department. Recommendation was received from the Electrical Advisory Committee for promulgation at the July 10, 2012 regular meeting.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes clear criteria for when electrical inspections are mandatory, permissive or exempt in the Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: The amendment will provide clarity for which electrical installations, repairs and maintenance require electrical inspection by a certified electrical inspector.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide guidelines and specific examples of when electrical installations, repairs and maintenance are subject to electrical inspections.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statute requires that the department promulgate an administrative regulation to describe under which circumstances electrical inspections are required.

(d) How the amendment will assist in the effective administration of the statutes: The amendment establishes clear guidelines for when electrical inspections are mandatory, permissive or exempt.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any building or property that is subject to an electrical inspection will be affected by this administrative regulation. Exact numbers are not available. However, given that electrical inspections have been conducted by both certified local electrical inspectors and state electrical inspectors for decades, there should be minimal increases or decreases in the number of electrical inspections conducted annually due to the formalization of circumstances which necessitate electrical inspections.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Those who are responsible for the electrical installations, maintenance and repairs conducted within the Commonwealth will be required to comply with the circumstances in which electrical inspections are required, permissible or exempt.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The inspection fees which are applicable to electrical inspections are determined on a local program basis. The Department of Housing, Buildings and Construction currently has no fee establishment authority; local programs currently hold the authority to make the determination of what will be charged for electrical inspections within the individual jurisdictions.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefit to those installing, maintaining or repairing electrical work is that this regulation now establishes, in clear language, under what circumstances electrical installations are mandatory, permissible and exempt.

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

(a) Initially: There is anticipated to be no cost increase by the reduction of these circumstances into the form of an administrative regulation.

(b) On a continuing basis: For the same reasons, the cost to the department and local electrical inspection programs should not be affected by the filing of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing agency funds for any inspections which fall to the jurisdiction of state electrical inspectors.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish fees for the mandatory nor permissive electrical inspections described within the administrative regulation.

(9) TIERING: Is tiering applied? Tiering is used in the sense that an electrical installation, maintenance or repair may either require mandatory inspection, be exempt from electrical inspections or subject to electrical inspection at the owner/permit holders discretion and upon request

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 as well as local governments.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 227.480

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There is minimal anticipated impact to the expenditures and revenues of the department and local government electrical inspection programs as this regulation merely clarifies the circumstances in which electrical inspections are mandatory, permissive or exempt.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year. This administrative regulation will generate no new revenues. Historical revenues for electrical inspections are anticipated to remain.

(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. Revenues for electrical inspections are anticipated to follow historical revenues for such inspections.

(c) How much will it cost to administer this program for the first year? Because a local government may choose to employ or to contract with certified electrical inspectors to conduct inspections

within the local jurisdiction, the department cannot provide information responsive to this inquiry. Additionally, the duties of the electrical inspectors employed by the department will remain unchanged so there will be no additional costs borne by the agency as a result of the promulgation of these inspection guidelines.

(d) How much will it cost to administer this program for subsequent years? As stated above, depending upon the local government's program, costs to administer this program may vary. However, as electrical inspection programs are longstanding statewide, the clarification of circumstances in which electrical inspections are required, permissive or exempt should not impact any local electrical inspection program noticeably.

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
Office of Health Policy
(New Administrative Regulation)

900 KAR 6:130. Certificate of Need criteria for physician exemption.

RELATES TO: KRS 216B.010, 216B.020, 216B.040, 216B.990

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 216B.040(2)(a)1

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. This administrative regulation establishes the requirements for physician exemption criteria necessary for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Ambulatory surgical center" is defined by KRS 216B.015.

(2) "Entity" means any legally recognized business entity in which an individual or group may practice its profession including a professional limited liability company, professional service corporation, partnership, or sole proprietor.

(3) "Evaluation and Management codes" means those codes recognized by the American Medical Association as procedures involving evaluation of patients and management of patient care in the Current Procedure Terminology© references.

(4) "Office" or "clinic" means the physical location at which health care services are provided by a physician, dentist, advanced practice registered nurse, licensed clinical social worker, speech therapist, occupational therapist, physical therapist, psychologists, or other practitioner of the healing arts.

(5) "Owner" means a "person" as defined in KRS 216B.015(21) who is applying for the certificate of need and will become the licensee of the proposed health service or facility.

(6) "Practice" means the individual, entity, or group that proposes to provide health care services and shall include the owners and operators of an office or clinic.

(7) "Practitioner of the healing arts" is defined in KRS 311.271.

(8) "Primarily" means a simple majority or something that occurs at least fifty-one (51) percent of the time.

(9) "Qualified academic medical center" means:

(a) An institution of higher education which operates an accredited medical school within the Commonwealth of Kentucky;

(b) An institution, organization, or other entity which directly or indirectly owns or is under common control or ownership with an accredited medical school operated within the Commonwealth of Kentucky; or

(c) An individual, organization, entity, or other person which is qualified under Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) as a result of supporting or operating in support of an institution, organization, entity, or other person referenced in paragraph (a) or (b) of this subsection.

Section 2. Physician non-exemption due to operation of an ambulatory surgical center. An office or clinic that is operating an ambulatory surgical center pursuant to KRS 216B.095(7) shall not be exempt from the Certificate of Need requirements.

Section 3. Physician exemption from Certificate of Need. (1) An office or clinic that would otherwise be required to obtain a Certificate of Need shall be exempt from Certificate of Need pursuant to KRS 216B.020(2) if:

(a) The practice claiming the exemption is 100 percent owned in an organizational form recognized by the Commonwealth as one in which the listed professions can be practiced by the individual physician, dentist, advanced practice registered nurse, licensed clinical social worker, speech therapist, occupational therapist, physical therapist, psychologist, or other practitioner of the healing arts or group of physicians, dentists, or advanced practice registered nurses, licensed clinical social workers, speech therapists, occupational therapists, physical therapists, psychologists, or other practitioners of the healing arts (hereinafter collectively referred to as "physician") claiming the exemption;

(b) The practice claiming the exemption primarily provides physician services (e.g., evaluation and management codes) rather than services or equipment covered by the State Health Plan;

(c) Services or equipment covered by the State Health Plan which are offered or provided at the office or clinic shall be primarily provided to patients whose medical conditions are being treated or managed by the practice;

(d) A physician or physicians licensed to practice and practicing in Kentucky within the practice and claiming the exemption are responsible for all decisions regarding the care and treatment provided to patients;

(e) Patients are treated on an outpatient basis and are not maintained overnight on the premises of the office or clinic;

(f) Services or equipment covered by the State Health Plan that are offered or provided at the office or clinic are related to the professional services offered to patients of the practice claiming the exemption;

(g) Major medical equipment in excess of the limits set forth in 900 KAR 6:030 is not being utilized without a Certificate of Need or other statutory or regulatory exemption; and

(h) Nothing in this section shall limit or prohibit the continued operation of an office or clinic that was established and in operation prior to January 31, 2006, and operating pursuant to and in accordance with the following:

1. Provisions of a Certificate of Need advisory opinion issued by the Office of Health Policy specifically with respect to an identified office or clinic that sought the opinion;

2. Provisions of an Attorney General opinion issued specifically with respect to that office or clinic; or

3. An order issued with respect to that office or clinic by a court of competent jurisdiction in the Commonwealth of Kentucky.

(2) A practice owned entirely by a radiologist or group of radiologists shall demonstrate the following:

(a) Compliance with subsections (1)(a), (d), (e), and (f) of this section;

(b) The radiologists shall regularly perform physician services (e.g., test interpretations) at the location where the diagnostic tests are performed, including interpretations by or through teleradiology; and

(c) The billing patterns of the practice indicate that the practice is not primarily a testing facility and that it was organized to provide the professional services of radiology.

(3) An office or clinic owned and operated by a Qualified Academic Medical Center shall demonstrate the following:

(a) The physician or physicians providing care and treatment to the patients of the office or clinic shall be licensed to practice in Kentucky and shall be employed by the Qualified Academic Medical Center; and

(b)1. The office was established and in operation prior to January 31, 2006;

2. The office does not provide any services or equipment covered by the State Health Plan; or

3. At the time the office began providing care and treatment to patients, it was not located in a county designated as a Metropoli-

tan Statistical Area as defined by the U.S. Office of Management and Budget, and there is a documented agreement of support or collaboration between the Qualified Academic Medical Center and each existing hospital in the county in which the office is located.

Section 4. Physician non-exemption due to operation of an ambulatory surgical center. An office or clinic that is operating an ambulatory surgical center pursuant to KRS 216B.095(7) shall not be exempt from Certificate of Need.

This is to certify that the Executive Director of the Office of Health Policy has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 156.070(4).

CARRIE BANAHAN, Executive Director
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: July 5, 2012
FILED WITH LRC: July 5, 2012 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 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 August 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 August 31, 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 40601, phone 502-564-7905, fax 502-564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carrie Banahan or Chandra Venettozzi

1. Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides clarification related to physician exemption from Certificate of Need. Language related to this subject was formerly included in 900 KAR 6:090 – Certificate of Need hearing and show cause hearing and is being moved to a separate administrative regulation for clarity. Also, as a result of the passage of House Bill 458, language was added to clearly state that physician owned ambulatory surgery centers are not exempt from Certificate of Need.

(b) The necessity of this administrative regulation: This administration regulation is necessary to provide clear and concise information related to physician exemption from the Certificate of Need program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 216B.010, 216B.020, 216B.040, 216B.990 by providing clear and concise information related to physician exemption from the Certificate of Need Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide clear and concise information related to physician exemption from the Certificate of Need 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 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 will affect health care providers governed by the Certificate of Need law, citizens who use health care in Kentucky, health planners in the Certificate of Need Program, and local communities that plan for, use, or develop community health care facilities. Approximately 160 applications for Certificate of Need are filed annually.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities will have clear and concise information related to physician exemption from the Certificate of Need Program.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities meeting the exemption status will not have to file an application for Certificate of Need.

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

(a) Initially: No cost

(b) On a continuing basis: No cost

6. What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary since there is no cost to implementing this administrative regulation.

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

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

9. TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment may impact any government owned, controlled or proposed healthcare facilities or services.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by: KRS 216B.010, 216B.020, 216B.040, 216B.990

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

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

revenues.

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

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Commissioner's Office
(New Administrative Regulation)

907 KAR 14:005. Health care-acquired conditions and other provider preventable conditions.

RELATES TO: KRS 205.560

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560, 42 C.F.R. 447.26, 42 U.S.C. 1396a Title II, Subtitle I, Section 2702 of the Patient Protection and Affordable Care Act

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the Medicaid program policies, including managed care and non-managed care, regarding health care-acquired conditions and provider preventable conditions.

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services or its designee.

(2) "Health care-acquired condition" is defined by 42 C.F.R. 447.26.

(3) "Managed care organization" means an entity for which the Department for
Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

(4) "Provider" is defined by KRS 205.8451(7).

(5) "Recipient" is defined by KRS 205.8451(9).

Section 2. Health Care-Acquired Conditions. (1) The department or a managed care organization shall not reimburse for medical assistance in any inpatient hospital setting for a health care-acquired condition.

(2) In accordance with 42 C.F.R. 447.26(d), if a health care-acquired condition occurs, a hospital shall:

(a) Identify, on the claim or document attached to or associated with the claim or course of treatment, the health care-acquired condition; and

(b) Submit the claim, a document associated with or regarding the claim, to the department within thirty (30) days of the occurrence of the health care-acquired condition.

Section 3. Other Provider Preventable Conditions. (1) The department or a managed care organization shall not reimburse for a:

(a) Wrong surgical or other invasive procedure performed on a recipient;

(b) Surgical or other invasive procedure performed on the wrong body part; or

(c) Surgical or other invasive procedure performed on the wrong person.

(2) In accordance with 42 C.F.R. 447.26, a provider who performs a procedure listed in subsection (1) of this section shall report it in writing, which shall include by electronic means or paper, to the department within thirty (30) days of performing the procedure.

(3) Subsection (1) and (2) of this section shall not apply to a nursing facility or an intermediate care facility for individuals with mental retardation or a developmental disability.

Section 4. Compliance with 42 C.F.R. 447.26. The department's or managed care organization's reimbursement shall comply with 42 C.F.R. 447.26(c)(2) and (3).

Section 5. Supersede. If any policy stated in another administrative regulation within Title 907 of the Kentucky Administration Regulations contradicts a policy stated in this administrative regulation, the policy stated in this administrative regulation shall supersede the policy stated elsewhere within Title 907.

NEVILLE WISE, Acting Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: June 12, 2012

FILED WITH LRC: June 22, 2012 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2012 at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by August 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 canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business August 31, 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 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person(s): Lisa Lee, Jill Hunter, or Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Medicaid program policies (managed care and non-managed care) regarding health care-acquired conditions and other provider preventable conditions.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with a federal mandate in the Patient Protection and Affordable Care Act and 42 C.F.R. 447.26.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the Patient Protection and Affordable Care Act and KRS 205.560 by establishing that the Department for Medicaid Services (DMS) and managed care organizations (MCOs) won't reimburse for medical assistance for health care-acquired conditions or other provider preventable conditions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the Patient Protection and Affordable Care Act and KRS 205.560 by establishing that DMS and MCOs won't reimburse for medical assistance for health care-acquired conditions or other provider preventable conditions.

(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 rather than an amendment.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation rather than an amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation rather than an amendment.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation rather than an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation will affect inpatient and outpatient hospitals, ambulatory surgical centers, physicians' practices, advanced practice registered nurse practices, rural health clinics, federally-qualified health care centers, primary care centers, and dentists' practices.

(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 a provider performs a provider preventable condition they are required to report it to the Department for Medicaid Services within thirty (30) days.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Not reimbursing for provider preventable conditions may decrease the likelihood of provider preventable conditions occurring.

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

(a) Initially: DMS anticipates a minimal increase in administrative expenditures initially for Medicaid Management Information System (MMIS) programming and related work necessary to preclude payment for provider preventable conditions.

(b) On a continuing basis: DMS anticipates no continuing cost resulting from the provider preventable condition amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Title XIX of the Social Security Act and matching funds of general fund appropriations.

(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 current fiscal year budget will not need to be adjusted to provide funds for implementing this administrative regulation.

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

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Title II, Subtitle I, Section 2702 of the Patient Protection and Affordable Care Act, 42 U.S.C. 1396a(a)(19), 42 U.S.C. 1396a(a)(30) and 42 C.F.R. 447.26.

2. State compliance standards. KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect." KRS 205.560(1) states, "The scope of medical care for which the Cabinet for Health and Family Services undertakes to pay shall be designated and limited by regulations promulgated by the cabinet, pursuant to the provisions in this section."

3. Minimum or uniform standards contained in the federal mandate. Title II, Subtitle I, Section 2702 of the Patient Protection and Affordable Care Act and 42 C.F.R. 447.26 prohibit federal payments for provider preventable conditions. 42 U.S.C. 1396a(a)(19) requires Medicaid programs to provide care and services consistent with the best interests of Medicaid recipients. 42 U.S.C. 1396a(a)(30) requires Medicaid program payments to be consistent with efficiency, economy, and quality of care and sufficient to enlist enough providers so that care and services are available at least to the extent that such care and services are available to the general population in the same geographic area.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter requirements are not imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This action is authorized by 42 C.F.R. 447.26 and this administrative regulation.

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

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

(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 amendment will not generate any additional revenue for state or local governments during subsequent years of implementation.

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) anticipates a minimal increase in administrative expenditures initially for Medicaid Management Information System (MMIS) programming and related work necessary to preclude payment for provider preventable conditions.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates very minimal on-going cost to administer the program.

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: No additional expenditures are necessary to implement this amendment.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of July 10, 2012

Call to Order and Roll Call

The July meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, July 10, 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 June 2012 meeting were approved.

Present were:

Members: Senators Joe Bowen, Alice Forgy Kerr, and David Givens, and Representatives Johnny Bell, Robert Damron, Danny Ford, and Jimmie Lee.

LRC Staff: Dave Nicholas, Donna Little, Emily Caudill, Sarah Amburgey, Emily Harkenrider, Karen Howard, and Betsy Cupp.

Guests: Melissa Justice, Kentucky Higher Education Assistance Authority; Colonel Steve Ballard, Kentucky National Guard; Brian Bishop, Board of Denistry; Jonathan Buckley, David Cox, State Board of Licensure for Professional Engineers and Land Surveyors; Nathan Goldman, Paula Schenk, Morgan Ransdell, Board of Nursing; Dave Hise, Mark Mangeot, Karen Waldrop, Department of Fish and Wildlife; Amber Arnett, Amy Barker, Department of Corrections; Bob Elkins, James R. Gridor, Jr, Kristi Redmen, Labor Cabinet; Virginia V. Davis, Tony Dehner, Department of Alcholic Beverage Control; Michael T. Davis, Marc A. Guilfoil, Mary Scollay, John Ward, Kentucky Horse Racing Commission; Rick Hiles, Ky HBPA; Andy Roberts, KHHA/KAEP; Dawn Bellis, Jack Coleman, David J. Moore, Ambrose Wilson, Department of Housing, Buildings and Construction; Allison Lile, Office of Health Policy; Rick Hiles, Ky HBPA; FD Marcum, and KAEP Andy Roberts, KHHA/KAEP.

The Administrative Regulation Review Subcommittee met on Tuesday, July 10, 2012, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY: Division of Student and Administrative Services: Kentucky Loan Program

11 KAR 3:100. Administrative wage garnishment. Melissa Justice, senior associate counsel, represented the division.

A motion was made and seconded to approve the following amendment: to amend Section 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

GENERAL GOVERNMENT CABINET: Department of Military Affairs: Division of Administrative Services: Military Assistance Trust Funds

106 KAR 2:030. National Guard adoption benefit program. Colonel Steve Bullard, director of administrative services, represented the division.

In response to a question by Co-Chair Bowen, Colonel Bullard stated that Kentucky's First Lady developed this program, which was adapted for the National Guard to correspond to the state employee benefit. Funding for the program was allocated from the military assistance trust fund.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to correct statutory citations. Without objection, and with agreement of the agency, the amendments were approved.

Board of Dentistry: Board

201 KAR 8:562. Licensure of dental hygienists. Brian Bishop, executive director, represented the board.

A motion was made and seconded to approve the following amendments: to amend Sections 4, 15, and 17 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 State Board of Licensure for Professional Engineers and Land Surveyors: Board

201 KAR 18:220. Administrative hearings. Jonathan Buckley, general counsel, and David Cox, executive director, represented the board.

Board of Nursing: Board

201 KAR 20:450. Alternative program. Nathan Goldman, general counsel; Morgan Ransdell, board prosecutor; and Paula Schenk, manager of consumer protection, represented the board.

In response to a question by Representative Ford, Ms. Schenk stated that if a nurse voluntarily reported a substance abuse problem and completed the program successfully, there would not be officially documented disciplinary action by the board. Failure to adhere to the program may result in license revocation.

A motion was made and seconded to approve the following amendments: to amend Section 3 to correct minor drafting errors. Without objection, and with agreement of the agency, the amendments were approved.

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

TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Game

301 KAR 2:041. Shooting areas, dog training areas, commercial foxhound training enclosures, and bobwhite shoot-to-train season. David Hise, attorney; Mark Mangeot, legislative liaison; and Karen Waldrop, wildlife director, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 3, 4, 6, 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.

301 KAR 2:300. Black bears.

In response to a question by Co-Chair Bowen, Dr. Waldrop stated that the current bear population could withstand the proposed hunting season.

Hunting and Fishing

301 KAR 3:022. License, tag, and permit fees.

A motion was made and seconded to approve the following amendment: to amend Section 2(4) to change “Shooting Preserve Permit” to “Shooting Area Permit.” Without objection, and with agreement of the agency, the amendment was approved.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary

501 KAR 6:050. Luther Luckett Correctional Complex. Amber Arnett, staff attorney, and Amy Barker, assistant general counsel, represented the department.

A motion was made and seconded to approve the following amendments: to amend Section 1 and the material incorporated by reference to conform to other departmental policies, clarify provisions, and correct minor drafting errors. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 6:110. Roederer Correctional Complex.

501 KAR 6:260. Procedures for recommendation of early termination of probation and review of compliance of supervised individuals.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 through 4 to clarify provisions; (2) to amend Sections 2 and 5 to correct citations; and

(3) to amend Sections 1, 2, 3, and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 6:280. Risk and needs assessment.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to correct statutory citations; and (2) to amend Section 1 and the material incorporated by reference to clarify provisions, correct minor drafting errors, and renumber the policies. Without objection, and with agreement of the agency, the amendments were approved.

LABOR CABINET: Department of Workplace Standards: Division of Occupational Safety and Health Compliance: Division of Occupational Safety and Health Education and Training: Occupational Safety and Health

803 KAR 2:300. General. Bob Elkins, safety standards specialist; James R. Grider, Jr., assistant general counsel; and Kristi Redmon, health standards specialist, represented the division.

In response to questions by Co-Chair Bell, Ms. Redmon stated that these administrative regulations provided consistency in chemical labeling. This consistency should facilitate compliance, and the implementation cost was expected to be offset by the savings vis a vis fewer employee accidents and deaths. The changes affected agricultural operations that fell within the same scope of practice as the industrial facilities involved.

In response to a question by Senator Kerr, Ms. Redmon stated that an industry that used chemicals would be affected by these administrative regulations. New labeling and new data sheets were required. The primary expense was expected to be the cost for training regarding the new labeling. These administrative regulations contained requirements that Kentucky was mandated by the federal government to adopt. These requirements were not more stringent than the federal requirements.

Staff stated that the division had filed a FISCAL NOTE ON STATE OR LOCAL GOVERNMENT as part of the amendment process. These were federal requirements that Kentucky was mandated to adopt.

In response to a question by Representative Ford, Ms. Redmon stated that a farmer who repackaged chemicals for agricultural use would not be impacted by these amendments because requirements for repackaging for personal use were not being revised.

In response to a question by Co-Chair Bowen, Ms. Redmon stated that these administrative regulations were similar to administrative regulations mandated by the U.S. EPA to be adopted by Kentucky's Department for Environmental Protection. Kentucky had a deadline of six (6) months to adopt these administrative regulations.

803 KAR 2:307. Hazardous materials.

803 KAR 2:309. General environmental controls.

803 KAR 2:313. Materials handling and storage.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct a citation; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:316. Welding, cutting, and brazing.

803 KAR 2:317. Special industries.

803 KAR 2:319. Commercial diving operations.

803 KAR 2:320. Toxic and hazardous substances.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:403. Occupational health and environmental controls.

803 KAR 2:405. Fire protection and prevention.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct citations; 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.

803 KAR 2:407. Adoption of 29 C.F.R. Part 1926.250-252.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a citation; 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.

803 KAR 2:425. Toxic and hazardous substances.

A motion was made and seconded to approve the following amendment: to amend Section 2 for clarification. Without objection, and with agreement of the agency, the amendment was approved.

803 KAR 2:500. Maritime employment.

PUBLIC PROTECTION CABINET: Department of Alcoholic Beverage Control: Licensing

804 KAR 4:370. Entertainment destination center license. Virginia V. Davis, legislative liaison, and Tony Dehner, commissioner, represented the department.

In response to a question by Senator Kerr, Mr. Dehner stated that entertainment districts similar to 4th Street Live were not precluded for the city of Lexington; however, Victorian Square had opted out of participation.

In response to questions by Senator Givens, Mr. Dehner stated that Newport on the Levee was the primary initiator of this administrative regulation. Subcommittee staff stated that subdivisions within the definition of "entertainment destination" were in accordance with the drafting requirements of KRS Chapter 13A.

Kentucky Horse Racing Commission: Thoroughbred Racing

810 KAR 1:018. Medication; testing procedures; prohibited practices. Marc A. Guilfoil, deputy executive director; Dr. Mary Scollay, equine medical director; and John Ward, executive director, represented the commission. Rick Hiles, president, Kentucky Horsemen's Benevolent and Protective Association, and member of the Equine Drug Research Council, and Dr. Andy Roberts, veterinarian and member of the Equine Drug Research Council, appeared in opposition to these administrative regulations.

Mr. Hiles stated that the Equine Drug Research Council was opposed to provisions regarding adjunct bleeder medication, which was proven effective and used in human surgical procedures. The Equine Drug Research Council voted unanimously to accept these provisions regarding adjunct bleeder medication only after being promised by the Kentucky Horse Racing Commission that the KHRC would not seek to ban the medication lasix. Because the KHRC had voted to ban lasix by future administrative regulation, the Equine Drug Research Council was now voicing its original opposition to the provisions regarding adjunct bleeder medication. Additionally, the change from a maximum allowable limit of five (5) to two (2) micrograms of phenylbutazone for thoroughbreds was overburdensome. Kentucky was the only state proposing these measures, and there were different requirements for different breeds of horses, which was confusing. The horse industry in

Kentucky was already in jeopardy, and these administrative regulations may cause further harm.

Dr. Roberts stated that the Equine Drug Research Council agreed to compromise by voting unanimously for approval of these administrative regulations, but the KHRC turned out to be acting in bad faith because it did not keep its promise to protect the current provisions for the use of lasix. The Equine Drug Research Council was required by statute to report to the General Assembly, and this testimony constituted that report.

In response to questions by Senator Givens, Mr. Hiles stated that he had not intended to testify on these administrative regulations until the KHRC voted to promulgate an administrative regulation to ban the use of lasix. Lasix was needed for therapeutic use on equine. Dr. Roberts stated that the Jockeys' Guild wanted to ban lasix to bolster public perception of racing integrity and to make Kentucky's administrative regulations commensurate with international standards. For these reasons, the Jockeys' Guild lobbied the KHRC to approve a ban on lasix. Mr. Hiles stated that the racing industry in the United States wanted Kentucky to ban lasix as a pilot project to test the impact that other states may expect. Banning lasix would affect approximately ninety-five (95) percent of racing horses. Dr. Roberts stated that the Equine Drug Research Council was established by statute in 1985, and the KHRC had never before overridden a decision of the Equine Drug Research Council. New York had attempted banning lasix, and it resulted in the destruction of the local racing industry.

In response to questions by Co-Chair Bowen, Dr. Roberts stated that the therapeutic benefit of lasix was as a diuretic, one of the safest types of drugs. It removed excess water and prevented bleeding from broken capillaries. In horses that were not racing, lasix was primarily used for heart problems. Mr. Hiles stated that this was the first major dispute between the KHRC and the Equine Drug Research Council.

In response to a question by Senator Kerr, Mr. Hiles described the makeup of the Equine Drug Research Council, whose members were appointed by the governor. The Equine Drug Research Council voted unanimously to accept these administrative regulations only because the KHRC promised to protect the use of lasix if administered by the state veterinarian. Because the KHRC voted to promulgate an administrative regulation to ban the use of lasix, the Equine Drug Research Council was no longer in support of these administrative regulations.

Subcommittee staff stated that the administrative regulations for consideration at this Subcommittee meeting addressed phenylbutazone and who administered lasix, but did not place a ban on the use of lasix.

In response to questions by Representative Damron, Dr. Roberts stated that a ban on lasix had been voted on by the KHRC but the administrative regulation to that effect had not yet been filed. Mr. Hiles stated that the first part of the KHRC's plan was to ban the use of lasix for graded stakes races. Lasix was used in European horse racing, but not on the actual day of racing. Dr. Roberts stated that the effects of lasix lasted about eight (8) hours and did not have an adverse effect on horses. Lasix did not cause severe dehydration if used properly. Mr. Hiles stated that delaying these administrative regulations would not have an adverse impact on this season's Keeneland races.

Representative Damron stated that Mr. Hiles and Dr. Roberts had sufficiently informed this Subcommittee of the concerns regarding a ban on lasix; however, that administrative regulation had not yet been filed, and the remainder of the discussion needed to refocus on the administrative regulations currently on the agenda for consideration.

In response to a question by Co-Chair Bowen, Dr. Roberts stated that Kentucky had been a leader in positive reformation of the horse racing industry. The KHRC had played an important part in that leadership; however, the KHRC had recently experienced membership changes.

In response to a question by Representative Lee, Dr. Scollay stated that there were different drug standards for different breeds of horses because different types of races had different times for the prerace examinations. The concern was that if horses that were examined early, as thoroughbreds were, were still under effects of a drug, the drug may mask or obscure possible dangers to a jockey. Upon early examination, many horses were over the limit for phenylbutazone. Standardbred horses, on the other hand, were not examined until the warm-up period about one (1) hour prior to racing; therefore, the effects of the drugs would have had sufficient time to have worn off before the examination. Drug testing prohibited administering medicine too close to race time. There was usually a fine for a first offense of improper drug administration. A second offense may be grounds for disqualification. Mr. Hiles stated that the effects of phenylbutazone lasted approximately eight (8) hours. The threshold limit was two (2) micrograms for thoroughbreds and five (5) micrograms for harness racehorses and standardbreds. Dr. Scollay stated that these administrative regulations required injection, rather than oral administration, of phenylbutazone in thoroughbreds.

Representative Lee stated that consideration of a ban on lasix should take place once that administrative regulation was promulgated.

Representative Damron stated that he took exception to Dr. Roberts' statement that the KHRC had played an important part in leadership; however, the KHRC had recently experienced membership changes. Representative Damron stated that Mr. Ward was an excellent choice to be the executive director, was quite competent, and that he had great respect for Mr. Ward's expertise, professionalism, and integrity. Mr. Hiles stated that the comment was not intended toward Mr. Ward. Dr. Roberts stated that his issues were with the commissioners, not with staff of the KHRC.

Mr. Guilfoil stated that the process of amending these administrative regulations began in August 2011. The KHRC held three (3) town hall meetings, and the issues were extensively vetted. Mr. Guilfoil was not aware of a promise not to ban lasix in return for acceptance of these administrative regulations by the Equine Drug Research Council. The KHRC supported intravenous administration by a veterinarian to protect the integrity of racing. Dr. Scollay stated that the effects on horses from the withdrawal of adjunct bleeder medication had not been sufficiently studied, especially if the purpose was to prevent bleeding. Kentucky was in the minority of states that still allowed adjunct bleeder medication. Mr. Ward stated that adjunct bleeder medication requirements were for the purpose of protecting the integrity of horse racing in Kentucky in order to build a future for this sport and to meet international standards.

In response to a question by Senator Givens, Dr. Scollay stated that she had reported to the public that banning lasix was not a matter being considered by the KHRC, which was accurate at the time. Later, the KHRC determined that lasix should be banned.

Co-Chair Bell stated that Mr. Ward was a person of character and honesty. He did not approve of overzealous regulations pertaining to what citizens do with their animals on their own property. It was not the government's role to require certain veterinarians for the administration of specific medications. Prohibiting administering phenylbutazone through feed seemed unwise. Kentucky's walking horse industry was destroyed by overcorrection after problems, and Co-Chair Bell did not want the same to happen to the racing industry.

A motion was made and seconded to approve the following amendments: (1) to amend Section 6 to clarify provisions and to specify that the cost for administering lasix shall be twenty (20) dollars or less if the actual cost is lower; and (2) to amend Sections 1, 7, 8, 20, and 23 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

810 KAR 1:028. Disciplinary measures and penalties.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 2, 4, 6, 7, and 8 to clarify provisions; (2) to amend the STATUTORY AUTHORITY and the NECESSITY, FUNCTION, AND CONFORMITY paragraphs to update citations; and (3) to amend Sections 2, 4, 5, 10, and 11 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

810 KAR 1:040. Drug, medication, and substance classification schedule and withdrawal guidelines.

Harness Racing

811 KAR 1:090. Medication; testing procedures; prohibited practices.

A motion was made and seconded to approve the following amendments: (1) to amend Section 6 to clarify provisions and to specify that the cost for administering lasix shall be twenty (20) dollars or less if the actual cost is lower; and (2) to amend Sections 1, 2, 7, 20, and 23 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

811 KAR 1:093. Drug, medication, and substance classification schedule and withdrawal guidelines.

811 KAR 1:095. Disciplinary measures and penalties.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 2, 4, 6, 7, 8, and 9 to clarify provisions; (2) to amend the STATUTORY AUTHORITY and the NECESSITY, FUNCTION, AND CONFORMITY paragraphs to update citations; and (3) to amend Section 11 to comply with the formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Quarter Horse, Appaloosa and Arabian Racing

811 KAR 2:093. Drug, medication, and substance classification schedule and withdrawal guidelines.

811 KAR 2:096. Medication; testing procedures; prohibited practices.

A motion was made and seconded to approve the following amendments: (1) to amend Section 6 to clarify provisions and to specify that the cost for administering lasix shall be twenty (20) dollars or less if the actual cost is lower; and (2) to amend Sections 1, 7, 8, 20, and 23 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

811 KAR 2:100. Disciplinary measures and penalties.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 2, 4, 6, 7, and 8 to clarify provisions; (2) to amend the STATUTORY AUTHORITY and the NECESSITY, FUNCTION, AND CONFORMITY paragraphs to update citations; and (3) to amend Sections 2, 4, 5, 10, and 11 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department of Housing, Buildings and Construction: Division of Plumbing: Plumbing

815 KAR 20:100. Joints and connections. Dawn M. Bellis, general counsel, and David J. Moore, division director, represented the division.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Health Policy: Data Reporting and Public Use Data Sets

900 KAR 7:030. Data reporting by health care providers. Allison Lile, healthcare data administrator, represented the office.

The following administrative regulations were deferred to the August 14, 2012, meeting of the Subcommittee:

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Office of Sales and Excise Taxes: Sales and Use Tax; Administration and Accounting

103 KAR 31:170 & E. Disaster area relief sales and use tax refunds.

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM: Kentucky Board of Emergency Medical Services: Board

202 KAR 7:601. Training, education, and continuing education.

TOURISM, ARTS AND HERITAGE CABINET: Department of Parks: Parks and Campgrounds

304 KAR 1:040. Campgrounds.

304 KAR 1:080. Kentucky ProudTM Promotion Program.

ENERGY AND ENVIRONMENT CABINET: Department for Natural Resources: Division of Mine Permits: Bond and Insurance Requirements

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

The Subcommittee adjourned at 3:30 p.m. until August 14, 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.

INTERIM JOINT COMMITTEE ON NATURAL RESOURCES AND ENVIRONMENT
Meeting of June 7, 2012

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Natural Resources and Environment for its meeting of June 7, 2012, having been referred to the Committee on June 6, 2012, pursuant to KRS 13A.290(6):

301 KAR 1:201
301 KAR 2:251

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the June 7, 2012 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON EDUCATION
Meeting of July 13, 2012

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Education for its meeting of July 13, 2012, having been referred to the Committee on July 5, 2012, pursuant to KRS 13A.290(6):

702 KAR 1:160
703 KAR 5:002
703 KAR 5:140
703 KAR 5:240
704 KAR 3:340
704 KAR 5:070

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the July 13, 2012 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

VOLUME 39, NUMBER 2 – AUGUST 1, 2012

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates B - 2

The Locator Index lists all administrative regulations published in VOLUME 39 of the *Administrative Register of Kentucky* from July 2012 through June 2013. 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 38 are those administrative regulations that were originally published in VOLUME 38 (last year's) issues of the *Administrative Register of Kentucky* but had not yet gone into effect when the *2012 Kentucky Administrative Regulations Service* was published.

KRS Index B - 5

The KRS Index is a cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each administrative regulation submitted for publication in VOLUME 39 of the *Administrative Register of Kentucky*.

Technical Amendment Index B - 8

The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the 2012 *Kentucky Administrative Regulations Service*. 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 of Kentucky*.

Subject Index B - 9

The Subject Index is a general index of administrative regulations published in VOLUME 39 of the *Administrative Register of Kentucky*, and is mainly broken down by agency.

VOLUME 38

The administrative regulations listed under VOLUME 38 are those administrative regulations that were originally published in Volume 38 (last year's) issues of the *Administrative Register of Kentucky* but had not yet gone into effect when the *2012 Kentucky Administrative Regulations Service* was 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:

Regulation Number	38 Ky.R. Page No.	Effective Date
103 KAR 31:170E	1934	5-11-12
405 KAR 10:011E*(r)*	1935	5-4-12
405 KAR 10:015E	1937	5-4-12
921 KAR 2:015E	1429	12-29-11
Replaced	1969	6-20-12

ORDINARY ADMINISTRATIVE REGULATIONS:

Regulation Number	38 Ky.R. Page No.	Effective Date
11 KAR 3:100		
Amended	1977	(See 39 Ky.R.)
101 KAR 2:102		
Amended	1171	7-6-12
101 KAR 2:140		
Amended	1176	
As Amended	1944	7-6-12
101 KAR 3:015		
Amended	1178	7-6-12
103 KAR 8:010		
Amended	73	
As Amended	1297	
103 KAR 31:170	2107	
106 KAR 2:030	2108	(See 39 Ky.R.)
201 KAR 8:562		
Amended	1870	(See 39 Ky.R.)
201 KAR 13:040		
Amended	1875	(See 39 Ky.R.)
201 KAR 18:220		
Amended	1991	
201 KAR 20:450		
Amended	1994	(See 39 Ky.R.)
201 KAR 20:490		
Amended	1764	
As Amended	1945	6-20-12
201 KAR 20:510		
Amended	1997	
201 KAR 23:015		
Amended	1767	
As Amended	1947	6-20-12
201 KAR 30:050		
Amended	1768	
As Amended	1947	7-6-12
201 KAR 32:035		
Amended	1877	(See 39 Ky.R.)
202 KAR 7:601		
Amended	1770	(See 39 Ky.R.)
301 KAR 1:201		
Amended	1783	6-7-12
301 KAR 1:410		
Amended	1788	
AmComments	1974	(See 39 Ky.R.)
301 KAR 2:041		
Amended	1879	(See 39 Ky.R.)
301 KAR 2:049		
Amended	1883	(See 39 Ky.R.)
301 KAR 2:081		
Amended	1887	(See 39 Ky.R.)
301 KAR 2:082		
Amended	1893	(See 39 Ky.R.)
301 KAR 2:084		
Amended	1898	(See 39 Ky.R.)
301 KAR 2:300		
Amended	1899	(See 39 Ky.R.)
301 KAR 3:022		
Amended	1903	(See 39 Ky.R.)
301 KAR 2:251		
Amended	1661	
As Amended	1948	6-7-12
304 KAR 1:040		
Amended	2002	
304 KAR 1:080	2110	
304 KAR 1:410	1974	
405 KAR 10:015	2111	
405 KAR 10:030		
Amended	2004	
405 KAR 16:020		
Amended	2007	
501 KAR 6:020		
Amended	1905	(See 39 Ky.R.)
501 KAR 6:050		
Amended	2011	(See 39 Ky.R.)
501 KAR 6:090		
Repealed	1808	7-6-12
501 KAR 6:091*(r)*	1808	7-6-12
501 KAR 6:110		
Amended	2013	
501 KAR 6:200		
Amended	1791	
As Amended	1951	7-6-12
501 KAR 6:240		
Amended	1793	
As Amended	1953	7-6-12
501 KAR 6:260	1916	(See 39 Ky.R.)
501 KAR 6:280	1918	(See 39 Ky.R.)
503 KAR 1:110		
Amended	1795	
As Amended	1953	7-6-12
503 KAR 3:070		
Amended	1665	
As Amended	1956	7-6-12
601 KAR 1:018		
Amended	1487	
As Amended	1957	7-6-12
601 KAR 1:019	1399	
As Amended	1962	7-6-12
702 KAR 1:160		
Amended	1799	(See 39 Ky.R.)
703 KAR 5:002*(r)*	1401	(See 39 Ky.R.)
703 KAR 5:070		
Amended	1907	(See 39 Ky.R.)
703 KAR 5:140		
Amended	1391	(See 39 Ky.R.)
703 KAR 5:220	707	
703 KAR 5:225	1919	(See 39 Ky.R.)
703 KAR 5:240	1407	(See 39 Ky.R.)
704 KAR 3:340		
Amended	1909	(See 39 Ky.R.)
704 KAR 5:070	1410	(See 39 Ky.R.)
803 KAR 2:300		
Amended	2016	
803 KAR 2:307		
Amended	2018	

Regulation Number	37 Ky.R. Page No.	Effective Date
803 KAR 2:309		
Amended	2021	
803 KAR 2:313		
Amended	2023	(See 39 Ky.R.)
803 KAR 2:316		
Amended	2025	
803 KAR 2:317		
Amended	2027	
803 KAR 2:319		
Amended	2029	
803 KAR 2:320		
Amended	2031	(See 39 Ky.R.)
803 KAR 2:403		
Amended	2037	
803 KAR 2:405		
Amended	2040	(See 39 Ky.R.)
803 KAR 2:407		
Amended	2042	(See 39 Ky.R.)
803 KAR 2:425		
Amended	2044	(See 39 Ky.R.)
803 KAR 2:500		
Amended	2046	
804 KAR 4:370		
Amended	2049	
806 KAR 3:190		
Amended	1910	(See 39 Ky.R.)
810 KAR 1:018		
Amended	2052	(See 39 Ky.R.)
810 KAR 1:028		
Amended	2061	(See 39 Ky.R.)
810 KAR 1:040	2116	
811 KAR 1:090		
Amended	2068	(See 39 Ky.R.)
811 KAR 1:093	2118	
811 KAR 1:095		
Amended	2077	(See 39 Ky.R.)
811 KAR 2:093	2119	
811 KAR 2:096		
Amended	2084	(See 39 Ky.R.)
811 KAR 2:100		
Amended	2093	(See 39 Ky.R.)
815 KAR 6:010		
Amended	1498	
Amended	1866	
As Amended	1966	7-6-12
815 KAR 6:070	1521	
As Amended	1968	
Withdrawn		6-8-12
815 KAR 20:100		
Amended	2099	
900 KAR 7:030		
Amended	2102	
900 KAR 9:010	2121	
921 KAR 2:015		
Amended	1501	
As Amended	1969	6-20-12
921 KAR 3:035		
Amended	1804	6-20-12

SYMBOL KEY:

* Statement of Consideration not filed by deadline

** Withdrawn, not in effect within 1 year of publication

*** Withdrawn before being printed in Register

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VOLUME 39

105 KAR 1:400E	4	5-30-12
502 KAR 10:120E	8	5-31-12
906 KAR 1:160E	182	7-13-12
907 KAR 14:005E	184	6-22-12

ORDINARY ADMINISTRATIVE REGULATIONS:

11 KAR 3:100		(See 38 Ky.R.)
As Amended	187	
16 KAR 2:120		
Amended	66	
40 KAR 2:330	350	
105 KAR 1:400		
Amended	68	
105 KAR 1:420		
Amended	72	
105 KAR 1:430		
Amended	74	
106 KAR 2:030		(See 38 Ky.R.)
As Amended	199	
201 KAR 2:340	172	
201 KAR 8:562		(See 38 Ky.R.)
As Amended	199	
201 KAR 13:040		(See 38 Ky.R.)
As Amended	11	
201 KAR 20:230		
Amended	257	
201 KAR 20:370		
Amended	258	
201 KAR 20:411		
Amended	259	
201 KAR 20:450		(See 38 Ky.R.)
As Amended	203	
201 KAR 22:001		
Amended	76	
201 KAR 22:040		
Amended	77	
201 KAR 22:045		
Amended	79	
201 KAR 22:053		
Amended	81	
201 KAR 30:030		
Amended	83	
201 KAR 30:125		
Amended	86	
201 KAR 30:180		
Amended	87	
201 KAR 30:190		
Amended	90	
201 KAR 33:035		(See 38 Ky.R.)
As Amended	12	
201 KAR 44:090	353	
201 KAR 44:100	354	
201 KAR 44:110	356	
201 KAR 44:120	357	
202 KAR 7:601		(See 38 Ky.R.)
AmComments	40	
301 KAR 1:410		(See 38 Ky.R.)
As Amended	13	
301 KAR 2:041		(See 38 Ky.R.)
As Amended	205	
301 KAR 2:049		(See 38 Ky.R.)
As Amended	15	
301 KAR 2:081		(See 38 Ky.R.)
As Amended	18	
301 KAR 2:082		(See 38 Ky.R.)
As Amended	23	
301 KAR 2:084		(See 38 Ky.R.)
As Amended	27	
301 KAR 2:300		(See 38 Ky.R.)

Regulation Number	38 Ky.R. Page No.	Effective Date
AmComments	53	
301 KAR 3:022		(See 38 Ky.R.)
AmComments	56	(See 38 Ky.R.)
As Amended	208	
302 KAR 16:091		
Amended	94	
302 KAR 27:050		
Amended	95	
302 KAR 28:020		
Amended	100	
302 KAR 28:050		
Amended	102	
302 KAR 29:020		
Amended	104	
302 KAR 29:050		
Amended	106	
302 KAR 29:060		
Amended	110	
306 KAR 1:011*(r)*	358	
307 KAR 1:005	359	
307 KAR 4:020		
Amended	262	
307 KAR 8:011*(r)*	361	
307 KAR 9:010		
Amended	264	
401 KAR 5:055		
Amended	265	
401 KAR 5:060		
Amended	268	
401 KAR 51:001		
Amended	113	
401 KAR 51:017		
Amended	124	
401 KAR 51:052		
Amended	135	
501 KAR 6:020		(See 38 Ky.R.)
As Amended	27	
501 KAR 6:050		(See 38 Ky.R.)
As Amended	209	
501 KAR 6:130		
Amended	144	
501 KAR 6:140		
Amended	146	
501 KAR 6:230		
Amended	270	
501 KAR 6:260		(See 38 Ky.R.)
As Amended	211	
501 KAR 6:270		
Amended	272	
501 KAR 6:280		(See 38 Ky.R.)
As Amended	212	
501 KAR 11:011*(r)*	*362*	
502 KAR 10:120		
Amended	148	
601 KAR 9:090		
Amended	274	
702 KAR 1:160		(See 38 Ky.R.)
As Amended	28	7-13-12
703 KAR 5:002		(See 38 Ky.R.)
As Amended	30	7-3-12
703 KAR 5:070		(See 38 Ky.R.)
AmComments	59	7-3-12
703 KAR 5:140		(See 38 Ky.R.)
As Amended	31	7-3-12
703 KAR 5:225		(See 38 Ky.R.)
AmComments	60	
703 KAR 5:240		(See 38 Ky.R.)
As Amended	32	7-13-12
704 KAR 3:340		(See 38 Ky.R.)
As Amended	34	7-13-12
704 KAR 5:070		(See 38 Ky.R.)
As Amended	35	
803 KAR 2:313		(See 38 Ky.R.)
As Amended	212	
803 KAR 2:320		(See 38 Ky.R.)
As Amended	212	
803 KAR 2:405		(See 38 Ky.R.)
As Amended	217	
803 KAR 2:407		(See 38 Ky.R.)
As Amended	217	
803 KAR 2:425		(See 38 Ky.R.)
As Amended	217	
806 KAR 3:190		(See 38 Ky.R.)
As Amended	36	
807 KAR 5:001		
Amended	275	
807 KAR 5:006		
Amended	295	
807 KAR 5:011		
Amended	312	
807 KAR 5:076		
Amended	320	
810 KAR 1:018		(See 38 Ky.R.)
As Amended	218	
810 KAR 1:028		(See 38 Ky.R.)
As Amended	224	
811 KAR 1:090		(See 38 Ky.R.)
As Amended	230	
811 KAR 1:095		(See 38 Ky.R.)
As Amended	237	
811 KAR 2:096		(See 38 Ky.R.)
As Amended	243	
811 KAR 2:100		(See 38 Ky.R.)
As Amended	251	
815 KAR 20:020		
Amended	151	
815 KAR 20:034		
Amended	325	
815 KAR 20:191		
Amended	155	
815 KAR 35:020	363	
815 KAR 35:060		
Amended	162	
900 KAR 6:060		
Amended	327	
900 KAR 6:085		
Amended	329	
900 KAR 6:090		
Amended	331	
900 KAR 6:130	365	
906 KAR 1:160		
Amended	335	
907 KAR 14:005	367	
910 KAR 1:190		
Amended	164	
921 KAR 1:001		
Amended	337	
921 KAR 1:380		
Amended	339	
921 KAR 1:400		
Amended	342	
921 KAR 1:410		
Amended	345	

SYMBOL KEY:

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KRS INDEX

KRS SECTION	REGULATION
12.355	201 KAR 22:045
13B	815 KAR 35:060
13B.010	921 KAR 1:410
15.055	921 KAR 1:410
15.380	906 KAR 1:160
16.505 - 16.652	105 KAR 1:430
48.010	401 KAR 51:001
58.200	815 KAR 20:191
61.510 - 61.705	105 KAR 1:430
61.645	105 KAR:400
61.701	105 KAR 1:420
61.702	105 KAR 1:420
61.645	105 KAR 1:420
61.870-884	807 KAR 5:001
67A.620	921 KAR 1:410
78.510 - 78.852	105 KAR 1:430
95.620	921 KAR 1:410
95.878	921 KAR 1:410
131.570	921 KAR 1:410
141.040	306 KAR 1:011
150.010	301 KAR 2:300
150.025	301 KAR 3:022
150.092	301 KAR 2:300
150.170	301 KAR 2:300
150.175	301 KAR 2:300
	301 KAR 3:022
150.180	301 KAR 3:022
150.183	301 KAR 3:022
150.240	301 KAR 3:022
150.275	301 KAR 3:022
150.280	301 KAR 3:022
150.290	301 KAR 3:022
150.450	301 KAR 3:022
150.485	301 KAR 3:022
150.520	301 KAR 3:022
150.525	301 KAR 3:022
150.600	301 KAR 3:022
150.603	301 KAR 3:022
150.620	301 KAR 3:022
150.660	301 KAR 3:022
150.720	301 KAR 3:022
154.12-100	307 KAR 1:005
154.20-033	307 KAR 1:005
	307 KAR 8:011
	307 KAR 9:010
154.31	307 KAR 1:005
	307 KAR 4:020
154.32	307 KAR 8:011
154.32-010	307 KAR 1:005
154.34-070	307 KAR 9:010
154.45-001-154.45-120	306 KAR 1:011
157.390	16 KAR 2:120
158.645	703 KAR 5:225
158.6451	703 KAR 5:070
	703 KAR 5:225
158.6453	703 KAR 5:070
	703 KAR 5:225
158.6455	703 KAR 5:070
	703 KAR 5:225
161.020	16 KAR 2:120
161.028	16 KAR 2:120
161.030	16 KAR 2:120
161.100	16 KAR 2:120
161.700	921 KAR 1:410
161.1211	16 KAR 2:120
161.1221	16 KAR 2:120
164.772	201 KAR 22:040
	815 KAR 35:060
186.570	921 KAR 1:410
186A.115	601 KAR 9:090
186A.500-550	601 KAR 9:090

KRS SECTION	REGULATION
189.010-210	601 KAR 9:090
194A.050	921 KAR 1:001
194A.060	910 KAR 1:190
196	501 KAR 6:130
	501 KAR 6:140
	501 KAR 6:230
	501 KAR 6:270
	501 KAR 6:999
197	501 KAR 6:130
	501 KAR 6:140
	501 KAR 6:230
	501 KAR 6:270
	501 KAR 6:999
205.201	910 KAR 1:190
205.203	910 KAR 1:190
205.455	910 KAR 1:190
205.460	910 KAR 1:190
205.465	910 KAR 1:190
205.560	907 KAR 14:005
205.594	921 KAR 1:410
205.595	921 KAR 1:410
205.705	921 KAR 1:380
205.710-205.800	921 KAR 1:001
	921 KAR 1:380
	921 KAR 1:400
205.710-205.802	921 KAR 1:410
205.990	921 KAR 1:400
205.992	921 KAR 1:380
209A.030	910 KAR 1:190
213.046	921 KAR 1:380
	921 KAR 1:400
214.610	201 KAR 22:040
216B.010	900 KAR 6:060
	900 KAR 6:085
	900 KAR 6:090
	900 KAR 6:130
216B.020	900 KAR 6:130
216B.040	900 KAR 6:130
216B.061	900 KAR 6:085
216B.062	900 KAR 6:060
216B.085	900 KAR 6:090
216B.086	900 KAR 6:090
216B.090	900 KAR 6:090
216B.095	900 KAR 6:090
216B.400	201 KAR 20:411
216B.990	900 KAR 6:060
	900 KAR 6:085
	900 KAR 6:090
	900 KAR 6:130
216B.0615	900 KAR 6:085
217B	302 KAR 27:050
	302 KAR 28:020
	302 KAR 28:050
	302 KAR 29:020
	302 KAR 29:060
217B.190	302 KAR 29:050
217B.515	302 KAR 29:050
217B.520	302 KAR 29:050
217B.525	302 KAR 29:050
217B.545	302 KAR 29:050
218A.240	906 KAR 1:160
218A.435	501 KAR 11:011
218A.1446	906 KAR 1:160
224.01-010	401 KAR 5:055
	401 KAR 5:060
	401 KAR 51:001
224.01-070	401 KAR 5:055
224.01-400	401 KAR 5:055
	401 KAR 5:060
224.10-100	401 KAR 51:017
224.20-100	401 KAR 51:001

KRS SECTION	REGULATION
	401 KAR 51:052
224.20-110	401 KAR 51:001
	401 KAR 51:052
224.20-120	401 KAR 51:001
	401 KAR 51:052
224.70-100	401 KAR 5:055
	401 KAR 5:060
224.70-120	401 KAR 5:055
	401 KAR 5:060
224.99-010	401 KAR 5:055
	401 KAR 5:060
227.480	815 KAR 35:020
227.487	815 KAR 35:020
227.491	815 KAR 35:020
227A.010	815 KAR 35:060
227A.060	815 KAR 35:060
227A.100	815 KAR 35:060
237.110	921 KAR 1:410
247.232	302 KAR 16:091
278	807 KAR 5:006
278.010	807 KAR 5:011
	807 KAR 5:076
278.020	807 KAR 5:001
278.030	807 KAR 5:011
	807 KAR 5:076
278.160	807 KAR 5:011
	807 KAR 5:076
278.170	807 KAR 5:011
278.180	807 KAR 5:011
	807 KAR 5:076
278.185	807 KAR 5:011
	807 KAR 5:076
278.190	807 KAR 5:011
	807 KAR 5:076
278.300	807 KAR 5:001
278.310	807 KAR 5:076
278.380	807 KAR 5:076
281A.120	502 KAR 10:120
281A.130	502 KAR 10:120
281A.150	502 KAR 10:120
281A.160	502 KAR 10:120
281A.170	502 KAR 10:120
310.005	910 KAR 1:190
310.021	910 KAR 1:190
310.031	910 KAR 1:190
311A.110	202 KAR 7:601
311A.115	202 KAR 7:601
311A.120	202 KAR 7:601
311A.130	202 KAR 7:601
314.041	201 KAR 20:230
	201 KAR 20:370
314.042	201 KAR 20:370
314.051	201 KAR 20:230
	201 KAR 20:370
314.071	201 KAR 20:230
	201 KAR 20:370
314.073	201 KAR 20:230
314.091	201 KAR 20:370
314.142	201 KAR 20:411
314.470	201 KAR 20:411
315.010	201 KAR 2:340
315.020	201 KAR 2:340
315.035	201 KAR 2:340
315.191	201 KAR 2:340
318.010	815 KAR 20:020
318.015	815 KAR 20:020
318.054	815 KAR 20:034
318.130	815 KAR 20:020
	815 KAR 20:034
318.150	815 KAR 20:020
318.160	815 KAR 20:191
318.200	815 KAR 20:020
319B.010	201 KAR 44:090
319B.030	201 KAR 44:090
	201 KAR 44:120

KRS SECTION	REGULATION
319B.040	201 KAR 44:400
319B.130	201 KAR 44:110
324A.010	201 KAR 30:030
324A.030	201 KAR 30:030
324A.035	201 KAR 30:030
	201 KAR 30:125
	201 KAR 30:180
	201 KAR 30:190
324A.040	201 KAR 30:030
	201 KAR 30:190
324A.045	201 KAR 30:125
324A.052	201 KAR 30:030
327.010	201 KAR 22:001
	201 KAR 22:045
327.040	201 KAR 22:053
327.050	201 KAR 22:040
327.070	201 KAR 22:040
	201 KAR 22:045
	201 KAR 22:053
334A.030	16 KAR 2:120
334A.033	16 KAR 2:120
334A.035	16 KAR 2:120
334A.050	16 KAR 2:120
334A.060	16 KAR 2:120
339.230	815 KAR 35:060
367.83801	40 KAR 2:330
367.83805	40 KAR 2:330
367.83807	40 KAR 2:330
403.160	921 KAR 1:400
403.210-403.240	921 KAR 1:001
	921 KAR 1:400
403.211	921 KAR 1:380
403.211-403.215	921 KAR 1:410
405.060	921 KAR 1:410
405.405-405.991	921 KAR 1:410
405.430	921 KAR 1:380
	921 KAR 1:400
405.440	921 KAR 1:001
	921 KAR 1:400
405.467	921 KAR 1:380
405.520	921 KAR 1:001
	921 KAR 1:380
405.991	921 KAR 1:400
406.021	921 KAR 1:380
	921 KAR 1:400
406.025	921 KAR 1:380
	921 KAR 1:400
407.5101-407.5902	921 KAR 1:001
	921 KAR 1:380
	921 KAR 1:410
421.500-421-550	201 KAR 20:411
427.120	921 KAR 1:410
427.125	921 KAR 1:410
439	501 KAR 6:130
	501 KAR 6:140
	501 KAR 6:230
	501 KAR 6:270
	501 KAR 6:999
454.220	921 KAR 1:400
610.170	921 KAR 1:380
29 C.F.R.	815 KAR 35:060
31 C.F.R.	921 KAR 1:410
33 C.F.R.	401 KAR 5:055
40 C.F.R.	401 KAR 5:055
	401 KAR 5:060
	401 KAR 51:001
	401 KAR 51:017
	401 KAR 51:052
45 C.F.R.	921 KAR 1:001
	921 KAR 1:380
	921 KAR 1:400
	921 KAR 1:410
49 C.F.R.	502 KAR 10:120
	807 KAR 5:006
7 U.S.C.	302 KAR 27:050

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	302 KAR 28:050		
	302 KAR 29:060		
12 U.S.C.	201 KAR 30:125		
	201 KAR 30:190		
15 U.S.C.	921 KAR 1:410		
20 U.S.C.	703 KAR 5:225		
26 U.S.C.	105 KAR 1:430		
	306 KAR 1:011		
33 U.S.C.	401 KAR 5:055		
	401 KAR 5:060		
42 U.S.C.	401 KAR 5:055		
	401 KAR 5:060		
	401 KAR 51:001		
	401 KAR 51:017		
	401 KAR 51:052		
	910 KAR 1:190		
	921 KAR 1:001		
	921 KAR 1:380		
	921 KAR 1:400		
	921 KAR 1:410		
49 U.S.C.	502 KAR 10:120		
	807 KAR 5:006		
Pub.L.110-245	105 KAR 1:430		

TECHNICAL AMENDMENT INDEX

Regulation Number	Effective Date	Regulation Number	Effective Date

The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the 2012 *Kentucky Administrative Regulations Service*. 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 of Kentucky*. NOTE: Finalized copies of the technically amended administrative regulations are available for viewing on the Legislative Research Commission Web site at http://www.lrc.ky.gov/home.htm.

SUBJECT INDEX

AGRICULTURE, DEPARTMENT OF
Agriculture Pest Control
Certification; 302 KAR 27:050
Amusement Rides
Rides and attractions not included in the definition of amusement ride or attraction; 302 KAR 16:091
Ornamental Turf Lawn and Interior Plantscape Pest Control
Certification; 302 KAR 28:050
General provisions; 302 KAR 28:020
Structural Pest Control
Certification; 302 KAR 29:060
Commercial structural pest control and fumigation; 302 KAR 29:050
General provisions; 302 KAR 29:020

AIR QUALITY, DIVISION OF
Attainment and Maintenance of the National Ambient Air Quality Standards
Definitions for 401 KAR Chapter 51; 401 KAR 51:001
Prevention of significant deterioration of air quality; 401 KAR 51:017
Review of new sources in or impacting upon nonattainment areas; 401 KAR 51:052

ECONOMIC DEVELOPMENT, CABINET FOR
Economic Development Finance Authority
Applications for Kentucky Incentive Program; 307 KAR 1:005
Kentucky Enterprise Initiative Act; 307 KAR 4:020
Repeal of 306 KAR 1:010, 1:020, 1:030, 1:040, 1:050, 1:060, 1:070 and 1:090; 306 KAR 1:011
Kentucky Business Investment Program
Repeal of 307 KAR 8:010; 307 KAR 8:011
Kentucky Reinvestment Act
Application for Kentucky Reinvestment Act Program; 307 KAR 9:010

EDUCATION, DEPARTMENT OF
Assessment and Accountability
Accountability Definitions and Procedures; 703 KAR 5:240
Procedures for the inclusion of special populations in the state-required assessment and accountability programs; 703 KAR 5:070
Repeal of 703 KAR 5:001, 020, 040, 050, 060, 130 and 160; 703 KAR 5:002
School and district accountability, recognition, support, and consequences; 703 KAR 5:225
General Administration
School health services; 702 KAR 1:160
Kindergartens and Nursery Schools
Common Kindergarten entry screener; 704 KAR 5:070
Office of Instruction
Commonwealth Diploma Program; 704 KAR 3:340

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Education, Department of; Titles 702-704 KAR *(See Education, Department of)*

EDUCATION PROFESSIONAL STANDARDS BOARD
Teaching Certificates
Emergency certification and out-of-field teaching; 16 KAR 2:120

ENERGY AND ENVIRONMENT CABINET
Environmental Protection, Department of
Air Quality, Division of *(See Air Quality, Division of; 401 KAR Chapter 51)*
Public Service Commission
Utilities
Alternative rate adjustment procedure for small utilities; 807 KAR 5:076
General Rules; 807 KAR 5:006
Rules of procedure; 807 KAR 5:001
Tariffs; 807 KAR 5:011
Water, Division of *(See Water Quality, Division of, 401 KAR Chapter 5)*

ENVIRONMENTAL PROTECTION, DEPARTMENT OF
Air Quality, Division of *(See Air Quality, Division of; 401 KAR Chapter 51)*

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems *(See Kentucky Retirement Systems, KAR Title 105)*

FISH AND WILDLIFE RESOURCES, DEPARTMENT OF
Fish
Taking of fish by nontraditional fishing methods; 301 KAR 1:410
Game
Black bear; 301 KAR 2:300
Importation of game birds; 301 KAR 2:084
Shooting areas, dog training areas, commercial foxhound training enclosures; and bobwhite shoot-to-train; 301 KAR 2:041
Small game and furbearer hunting and trapping on public areas; 301 KAR 2:049
Transportation and holding of live exotic wildlife; 301 KAR 2:082
Transportation and holding of live native wildlife; 301 KAR 2:081
Hunting and Fishing
License, tag, and permit fees; 301 KAR 3:022

GENERAL GOVERNMENT CABINET
Agriculture, Department of *(See Agriculture, Department of; KAR Title 302 KAR)*
Dentistry; Board of
Licensure of dental hygienists; 201 KAR 8:562
Kentucky Real Estate Appraisers Board *(See Kentucky Real Estate Appraisers Board, 201 KAR Chapter 30)*
Marriage and Family Therapists, Board of
Supervision of marriage and family therapist associates; 201 KAR 32:035
Military Affairs; Department of
Military Assistance Trust Funds
National Guard adoption benefit program; 106 KAR 2:030
Nursing, Board of
Applications for licensure; 201 KAR 20:370
Alternative program; 201 KAR 20:450
Renewal; 201 KAR 20:230
Sexual assault nurse examiner program standards and credential requirements; 201 KAR 20:411
Voluntary relinquishment of a license or credential; 201 KAR 20:510
Ophthalmic Dispensers; Board of
Licensing; application; examination; experience; renewal; and inactive status; 201 KAR 13:040
Pharmacy, Board of
Special pharmacy permit for clinical practice; 201 KAR 2:340
Physical Therapy, Board of *(See Physical Therapy, Board of; 201 KAR Chapter 22)*
Professional engineers and land surveyors, Board of Licensure for
Fees; 201 KAR 18:040
Prosthetics, Orthotics, and Pedorthics; Board of
Inactive status; 201 KAR 44:100
Licensure by endorsement; 201 KAR 44:110
Post residency registration; 201 KAR 44:120
Requirements for licensure as an orthotist, prosthetist, orthotist-prosthetist, pedorthist, or orthotic fitter on or after January 1, 2013; 201 KAR 44:090

HEALTH AND FAMILY SERVICES, CABINET FOR
Aging and Independent Living, Department for
Aging Services
Nutrition program for older persons; 910 KAR 1:190
Certificate of Need
Certificate of Need criteria for physician exemption; 900 KAR 6:130
Certificate of Need filing, hearing, and show cause hearing; 900 KAR 6:090
Implementation of outstanding Certificate of Need when ownership has changed; 900 KAR 6:085

Timetable for submission of Certificate of Need applications; 900 KAR 6:060
Data Reporting and Public Use Data Sets
Data reporting by health care providers; 900 KAR 7:030
Kentucky Health Information
Kentucky health information exchange participation; 900 KAR 9:010
Income Support; Department for
Child support collection and enforcement; 921 KAR 1:410
Child support enforcement program application and inter governmental process; 921 KAR 1:380
Definitions; 921 KAR 1:001
Establishment, review, and modification of child support and medical support orders; 921 KAR 1:400
Inspector General; Office of
Monitoring system for products containing ephedrine, pseudoephedrine, or phenylpropanolamine; 906 KAR 1:160
Medicaid Services; Department for
Health care-acquired conditions and other provider preventable conditions; 907 KAR 14:005

HOUSING, BUILDINGS AND CONSTRUCTION, DEPARTMENT OF
Building Code Enforcement, Division of; 815 KAR Chapters 4-8 *(See Building Code Enforcement, Division of)*
Electrical

Licensing of electrical contractors, electricians, and master electricians pursuant to KRS 227A.060; 815 KAR 35:060
Plumbing
Joints and connections; 815 KAR 20:100
Minimum fixture requirements; 815 KAR 20:191
Parts or materials list; 815 KAR 20:020
Requirements for approval of continuing education courses and providers; 815 KAR 20:034

INSURANCE, DEPARTMENT OF
Authorization of Insurers and General Requirements
Risk-based capital for insurers; 806 KAR 3:190

JUSTICE AND PUBLIC SAFETY CABINET
Kentucky State Police; Department of; 502 KAR Chapter 11 *(See Kentucky State Police; Department of)*
Asset Forfeiture
Repeal 501 KAR 11:010; 501 KAR 11:011
Office of the Secretary
Bell County Forestry Camp; 501 KAR 6:140
Corrections policies and procedures; 501 KAR 6:020
Corrections secured policies and procedures; 501 KAR 6:999
Little Sandy Correctional Complex; 501 KAR 6:230
Luther Luckett Correctional Complex; 501 KAR 6:050
Probation and parole policies and procedures; 501 KAR 6:280
Probation and parole policies and procedures; 501 KAR 6:270
Procedures for recommendation of early termination of probation and review of compliance of supervised individuals; 501 KAR 6:260
Roederer Correctional Complex; 501 KAR 6:110
Western Kentucky Correctional Complex; 501 KAR 6:130

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM
Kentucky Board of Emergency Medical Services
Training, education, and continuing education; 202 KAR 7:601

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
Kentucky Loan Program; 11 KAR 3:100

KENTUCKY HORSE RACING COMMISSION
Harness
Disciplinary measures and penalties; 811 KAR 1:095
Drug, medication, and substance classification schedule and withdrawal guidelines; 811 KAR 1:093
Medication; testing procedures; prohibited practices; 811 KAR 1:090
Quarter Horse, Appaloosa, and Arabian Racing
Disciplinary measures and penalties; 811 KAR 2:100
Drug, medication, and substance classification schedule and withdrawal guidelines; 811 KAR 2:093
Medication; testing procedures; prohibited practices; 811 KAR 2:096
Thoroughbred Racing
Disciplinary measures and penalties; 810 KAR 1:028
Drug, medication, and substance classification schedule and withdrawal guidelines; 810 KAR 1:040
Medication; testing procedures; prohibited practices; 810 KAR 1:018

KENTUCKY REAL ESTATE APPRAISERS BOARD
Continuing education for appraisers; 201 KAR 30:125
Distance education standards; 201 KAR 30:180
Educational requirements for certification; 201 KAR 30:190
Types of appraisers required in federally-related transactions; certification and licensure; 201 KAR 30:030

KENTUCKY RETIREMENT SYSTEMS
General Rules
401(h) account established under 26 USC 401(h); 105 KAR 1:420
Federal taxation limitation year; 105 KAR 1:400
General compliance with federal tax laws; 105 KAR 1:430

KENTUCKY STATE POLICE; DEPARTMENT OF
Driver Training
Hazardous materials endorsement requirements; 502 KAR 10:120

LABOR CABINET
Workplace Standards, Department of; 803 Chapter 2 *(See Workplace Standards, Department of)*

NATURAL RESOURCES; DEPARTMENT FOR
Bond and Insurance Requirements
General bonding provisions; 405 KAR 10:015
General requirements for liability insurance; 405 KAR 10:030
Repeal of 405 KAR 10:010 and 10:020; 405 KAR 10:011E
Performance Standards for Surface Mining Activities
Contemporaneous reclamation; 405 KAR 16:020

OFFICE OF THE INSPECTOR GENERAL
Division of Consumer Protection
Mold remediation; 40 KAR 2:330

PHYSICAL THERAPY, BOARD OF
Code of ethical standards and standards of practice for physical therapists and physical therapist assistants; 201 KAR 45:053
Continued competency requirements and procedures; 201 KAR 22:045
Definitions for 201 KAR Chapter 22; 201 KAR 22:001
Procedure for renewal or reinstatement of a credential for a physical therapist or a physical therapist assistant; 201 KAR 22:040

PUBLIC PROTECTION CABINET
Alcoholic Beverage Control, Division of
Entertainment destination center license; 804 KAR 4:370
Housing, Buildings, and Construction, Department of 815 KAR Chapter 25 *(Housing, Buildings, and Construction, Department of)*
Insurance, Department of; Title 806 Chapters 2, 14-17*(See Insurance, Department of)*
Kentucky Horse Racing Commission; KAR Titles 810 and 811*(See Kentucky Horse Racing Commission)*

REVENUE, DEPARTMENT OF
Sales and Use Tax; Administration and Accounting
Disaster area relief sales and use tax refunds; 103 KAR 31:170

TRANSPORTATION CABINET
Motor Carriers; Division of

Overweight or over dimensional farm equipment; 601 KAR 1:019
Special overweight or overdimensional motor vehicle load permits; 601 KAR 1:018
Motor Vehicle Tax
Procedures for inspecting vehicles; 601 KAR 9:090

TOURISM, ARTS AND HERITAGE CABINET
Fish and Wildlife Resources, Title 301 Chapters 1-4 *(See Fish and Wildlife Resources)*
Parks; Department of
Campgrounds; 304 KAR 1:040
Kentucky Proud Promotion Program; 304 KAR 1:080

WATER, DIVISION OF
KPDES application requirements; 401 KAR 5:060
Scope and applicability of the KPDES Program; 401 KAR 5:055

WORKPLACE STANDARDS, DEPARTMENT OF
Occupational Safety and Health
Adoption of 29 C.F.R. Part 1926.250-252; 803 KAR 2:407
Commercial diving operations; 803 KAR 2:319
Fire protection and prevention; 803 KAR 2:405
General; 803 KAR 2:300
General environmental controls; 803 KAR 2:309
Hazardous materials; 803 KAR 2:307
Maritime employment; 803 KAR 2:500
Materials handling and storage; 803 KAR 2:313
Occupational health and environmental controls; 803 KAR 2:403
Special industries; 803 KAR 2:317
Toxic and hazardous substances; 803 KAR 2:320 and 2:425
Welding, cutting, and brazing; 803 KAR 2:316